

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

3 UNITED STATES OF AMERICA) CASE NO. 1:19CR529-1
4)
5 vs.) Winston-Salem, North Carolina
6 MAURICE OWEN WILEY, JR.) April 22, 2021
) 9:07 a.m.

7 TRANSCRIPT OF THE **TRIAL**
8 **VOLUME IV OF VII (Pgs. 704-917)**
9 BEFORE THE HONORABLE THOMAS D. SCHROEDER
 UNITED STATES DISTRICT JUDGE

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P R O C E E D I N G S

(The Defendant was present.)

THE COURT: Okay. Good morning. Before we get started, something has been brought to my attention that we are going to need to address. Ms. Engle has reported that -- and let the record reflect that the jury is not in the room -- that one of the jurors has reported that two other jurors have discussed the case in some respect, and this was brought to the attention of Ms. Engle this morning. I don't know any details about any of it, other than that at some point two of the jurors were talking about something about the case.

I can't tell yet whether that's in violation of my instruction. And so the question is whether to make inquiry about it and then how to proceed. My inclination would be to bring in the one juror who reported it, find out what that juror says. And then after that, if there is reason to proceed, bring in the other two jurors, find out what the discussion has been about. And then we'll decide where we go from there.

So before I do that, let me ask if you want to be heard on that.

MR. GREEN: No, Your Honor. Obviously, I know you would plan to bring them in individually to do that. And then certainly we're interested in the first reporting juror, what is the nature of the discussion.

1 And I guess the question is more generally and to the
2 extent that we can elicit some details in terms of, you know,
3 whether it was a fleeting discussion or prolonged discussion.
4 That sort of inquiry would be the only request by the
5 Government.

6 **THE COURT:** All right. Do you want to be heard,
7 Mr. Bryson?

8 **MR. BRYSON:** Your Honor, we have no objection to the
9 Court's proposed inquiry.

10 **THE COURT:** Okay. All right. Ms. Engle, if you
11 would bring in Juror No. 1, please. Juror No. 1 is the one who
12 reported it.

13 Does anybody contend that she needs to be sworn?

14 **MR. GREEN:** I do not.

15 **MR. BRYSON:** No, Your Honor.

16 **THE COURT:** All right. Please bring her in.

17 (Juror No. 1 entered the courtroom.)

18 **THE COURT:** Good morning. You're Ms. Lancaster,
19 Juror No. 1?

20 **JUROR NO. 1:** Yes.

21 **THE COURT:** If you would speak loudly so that the
22 lawyers can all hear you as well.

23 It was reported to me that you reported to Ms. Engle
24 some conversation among some jurors about the case.

25 **JUROR NO. 1:** Just --

1 **THE COURT:** I'm here to learn what it -- and we all
2 want to know what it is that you heard, and then I may have
3 some follow-up questions.

4 **JUROR NO. 1:** Okay. Just, in general, chatter when
5 we go back. You know, it was my understanding and everyone
6 else's not to discuss it in any way, shape, or form amongst
7 ourselves. And they will just talk about maybe what we've just
8 seen and kind of speculate on things. And, you know, I just
9 felt that it probably wasn't right, and I didn't want it to
10 hinder anything going on. So I felt I should probably say
11 something.

12 **THE COURT:** All right. I appreciate you bringing it
13 to our attention. When were these discussions you've heard?

14 **JUROR NO. 1:** There was a little bit the first day,
15 Tuesday, and then I noticed it again yesterday afternoon during
16 the break. And, you know, I just, again, felt I should
17 probably say something.

18 **THE COURT:** All right.

19 **JUROR NO. 1:** It is just a couple that will engage.
20 I mean, that's it.

21 **THE COURT:** I will have to ask you: Who were the
22 jurors? Which jurors?

23 **JUROR NO. 1:** Juror No. 3.

24 **THE COURT:** Ms. Spach?

25 **JUROR NO. 1:** Yes, I believe. And No. 9.

1 **THE COURT:** Ms. Alderman?

2 **JUROR NO. 1:** Yes.

3 **THE COURT:** Were they -- were they both discussing it
4 or was one discussing it and the other listening, or how would
5 you describe what happened?

6 **JUROR:** I would say they were both discussing it.
7 One will bring it up more often, which is No. 3, and I would
8 say maybe she's the instigator a little bit, but other people
9 just kind of sit back and shake their head and do not engage at
10 all.

11 **THE COURT:** All right. Could you tell whether either
12 juror had formed any opinion in the case or not?

13 **JUROR NO. 1:** I could not, no.

14 **THE COURT:** What was the length of these discussions?

15 **JUROR NO. 1:** I would say probably about ten minutes
16 or so, just kind of back and forth. It was really mainly going
17 on pretty much the whole break -- afternoon break yesterday.

18 **THE COURT:** All right. What about on Tuesday?

19 **JUROR NO. 1:** Tuesday I think that they engaged with
20 themselves and I think, like, turned to other people a little
21 bit, which I said no one else would engage and just kind of
22 didn't have anything to do with it, but then they would get on
23 another topic.

24 **THE COURT:** About the case?

25 **JUROR NO. 1:** No.

1 **THE COURT:** How long would you say Tuesday's
2 discussion about the case occurred?

3 **JUROR NO. 1:** Probably about the same.

4 **THE COURT:** When they discussed the case, what types
5 of things were they discussing? Was it the evidence, or was it
6 something else?

7 **JUROR NO. 1:** Yes, and talking a little bit about the
8 witnesses and how they would have to see what else came out or
9 kind of -- you know, to -- and then ask, like, why certain
10 things happened the way they did.

11 **THE COURT:** Okay. All right. Do you know; did
12 anybody say anything to them that they should not be doing
13 that?

14 **JUROR NO. 1:** No.

15 **THE COURT:** All right. I may have some more
16 questions for you. Just for ease of facilitation, I may ask if
17 you don't mind -- Ms. Engle, if you would take Ms. Lancaster
18 just outside of the door for a minute. Let me talk to the
19 lawyers.

20 Thank you for bringing that to my attention. You did
21 the right thing.

22 (Juror No. 1 departed the courtroom.)

23 **THE COURT:** Ms. Engle, I will let you know if we need
24 her back in the courtroom.

25 All right. So the juror is outside the courtroom.

1 Let me ask the Government: Any follow-up questions?

2 **MR. GREEN:** No follow-up questions.

3 **THE COURT:** Mr. Bryson?

4 **MR. BRYSON:** And I don't know whether it needs to be
5 asked or not, if it's clear in the Court's mind. It's my
6 understanding this is happening in the jury room where they are
7 all sitting at the same time?

8 **THE COURT:** I will ask that question.

9 **MR. BRYSON:** It wasn't clear to me exactly where this
10 is happening and if all the other jurors are present when this
11 is happening.

12 **THE COURT:** All right. Bring her back in, please.

13 (Juror No. 1 entered the courtroom.)

14 **THE COURT:** Ms. Lancaster, where did these
15 discussions take place that you heard these two jurors talking?

16 **JUROR NO. 1:** In the jury room.

17 **THE COURT:** Were all other jurors in the area.

18 **JUROR NO. 1:** Yes, I believe so. It was during the
19 break.

20 **THE COURT:** Do you know whether some were in the
21 restroom and some were not? In other words, what I'm asking
22 is: Do you know how many jurors were in the room at the time?

23 **JUROR NO. 1:** I believe it was all of us, maybe minus
24 one that could have been in the restroom, but the room was
25 full.

1 **THE COURT:** Do you know, based on how they were
2 talking, whether others in the room were able, in your view, to
3 be able to hear them or not, given where they were spread out
4 in the room?

5 **JUROR NO. 1:** Yes, but everyone else just kind of --
6 no one -- no one else engaged. And then the other people would
7 just start different conversations amongst themselves.

8 **THE COURT:** Do you know whether the other jurors
9 actually listened to what they said throughout the
10 conversation?

11 **JUROR NO. 1:** I believe, you know, especially the
12 ones that were right behind them, I'm sure heard. The way they
13 were talking, they weren't giving an opinion either way or
14 anything like that. They were just discussing what we had seen
15 and things that they didn't understand.

16 **THE COURT:** Okay. Were other jurors talking at some
17 point while these folks were talking?

18 **JUROR NO. 1:** Yes.

19 **THE COURT:** They had their own conversations --

20 **JUROR NO. 1:** Yes.

21 **THE COURT:** -- about something else?

22 **JUROR NO. 1:** Yes.

23 **THE COURT:** All right. Thank you very much.

24 (Juror No. 1 departed the courtroom.)

25 **THE COURT:** All right. Juror 1 has left the room.

1 Any further questions?

2 **MR. GREEN:** No, Your Honor.

3 **THE COURT:** Mr. Bryson?

4 **MR. BRYSON:** No, Your Honor.

5 **THE COURT:** All right. So at this point, it would be
6 my inclination then to call in the two jurors one at a time and
7 ask them about what occurred.

8 **MR. GREEN:** Yes, Your Honor.

9 **THE COURT:** All right. If you would please bring in
10 next Juror No. 3.

11 (Juror No. 3 entered the courtroom.)

12 **THE COURT:** Give me just a moment, ma'am.

13 All right. You're Ms. Spach; is that correct?

14 **JUROR NO. 3:** Yes.

15 **THE COURT:** Ms. Spach, have you had conversations
16 with at least one other juror about the evidence during the
17 breaks?

18 **JUROR NO. 3:** What do you mean exactly?

19 **THE COURT:** Well, have you talked to another juror
20 during any of the breaks about the case?

21 **JUROR NO. 3:** About the case?

22 **THE COURT:** Yes, or the evidence you've seen.

23 **JUROR NO. 3:** I mean, we've talked just about how
24 long it's going to last and, you know, things like that, yeah.

25 **THE COURT:** Have you talked about the evidence?

1 **JUROR NO. 3:** To just the jurors.

2 **THE COURT:** Have you talked about the evidence, what
3 you've seen in court?

4 **JUROR NO. 3:** We were just talking about the
5 procedures and how long it takes, that kind of thing.

6 **THE COURT:** Have you talked about any of the
7 witnesses with another juror?

8 **JUROR NO. 3:** I didn't know we weren't supposed to
9 talk about it to the jurors.

10 **THE COURT:** Well, I'm asking you whether you did.

11 **JUROR NO. 3:** I don't know. I can't really recall
12 specifically.

13 **THE COURT:** Did you have any discussions with another
14 juror either on Tuesday or Wednesday with respect to the
15 evidence in this case during a break?

16 **JUROR NO. 3:** I don't really recall.

17 **THE COURT:** Okay. When you say you don't recall,
18 does that mean you may have?

19 **JUROR NO. 3:** Possibly.

20 **THE COURT:** Okay.

21 **JUROR NO. 3:** I have done everything you said as far
22 as not talking to anybody about it. Everything you said
23 outside of the -- you know --

24 **THE COURT:** Well, I'm interested to know whether
25 you've had any discussion about the evidence with any another

1 juror; and, if so, who that person might be.

2 **JUROR NO. 3:** I don't think I have.

3 **THE COURT:** Did you understand my instructions to the
4 jurors has been not to discuss about the case or any matter
5 related to the case until I directed them to do that after I
6 gave the final instructions in the case?

7 **JUROR NO. 3:** Yes.

8 **THE COURT:** Do you understand that?

9 **JUROR NO. 3:** Yes.

10 **THE COURT:** Have you understood that to be my
11 direction?

12 **JUROR NO. 3:** I think so. I guess I don't
13 specifically understand -- I mean, as far as -- do you mean
14 specific pieces of evidence, that we're being shown, that we
15 can't discuss it among other jurors?

16 **THE COURT:** Well, did you discuss that or not?

17 **JUROR NO. 3:** I don't think so. I mean, the only
18 thing we talked about was how long it took, you know,
19 procedures were taking and that kind of thing.

20 **THE COURT:** All right. Have you formed any opinion
21 in the case?

22 **JUROR NO. 3:** No.

23 **THE COURT:** All right. Are you able to keep an open
24 mind in the case?

25 **JUROR NO. 3:** Yes.

1 **THE COURT:** Are you able to wait until all the
2 evidence is in before you form an opinion in the case?

3 **JUROR NO. 3:** Yes.

4 **THE COURT:** Are you able to follow all my
5 instructions, including an instruction not to talk about
6 anything related to the case during any time until I tell you
7 to deliberate?

8 **JUROR NO. 3:** Yes.

9 **THE COURT:** Which wouldn't mean during any break with
10 other jurors.

11 **JUROR NO. 3:** Yes.

12 **THE COURT:** All right. Give me a moment. I'm going
13 to ask Ms. Engle to take you out of the courtroom just for a
14 moment. I may have more questions for you, so don't go too
15 far. Thank you, ma'am.

16 (Juror No. 3 exited the courtroom.)

17 **THE COURT:** All right. Juror No. 3 has left the
18 courtroom.

19 Let me ask counsel, starting with the Government, any
20 follow-ups?

21 **MR. GREEN:** No follow-up questions.

22 **MR. BRYSON:** No follow-up questions.

23 **THE COURT:** I would now propose bringing in Juror
24 No. 9 and asking similar questions. Any objection?

25 **MR. GREEN:** No objection.

1 **MR. BRYSON:** No objection.

2 **THE COURT:** All right. If you would please bring in
3 Juror No. 9.

4 While she's doing that, let me say that it's clear
5 that throughout this process there is a balance because I do
6 not want to magnify any problem that we have. So I am trying
7 to be cautious about that. Obviously bringing in the jurors
8 who may be involved might raise that.

9 All right. So I am trying to find a way to do this
10 in a way that doesn't alter that.

11 **MR. GREEN:** Yes, Your Honor.

12 (Juror No. 9 entered the courtroom.)

13 **THE COURT:** Good morning. You're Juror No. 9,
14 Ms. Alderman?

15 **JUROR NO. 9:** Yes.

16 **THE COURT:** Ms. Alderman, have you had any
17 discussions about any of the evidence with any other juror
18 during any of the breaks?

19 **JUROR NO. 9:** No, Your Honor.

20 **THE COURT:** Have you had any discussions with any
21 juror on Tuesday or Wednesday, including yesterday afternoon,
22 discussing any of the proceedings that have been occurring in
23 the courtroom?

24 **JUROR NO. 9:** Maybe in the jury room where we're
25 waiting, kind of talking about what we saw.

1 **THE COURT:** Okay. And who did you have that
2 conversation with?

3 **JUROR NO. 9:** I don't know the names of --

4 **THE COURT:** Do you know where the juror sits?

5 **JUROR NO. 9:** I'm not sure.

6 **THE COURT:** How many jurors were involved with you?
7 Is it one or more?

8 **JUROR NO. 9:** I think it was just us kind of sitting
9 in the bench area.

10 **THE COURT:** Who were you having your conversation
11 with?

12 **JUROR NO. 9:** I know -- I don't know where he sits.
13 I think he's a pharmacist. I'm not sure his name.

14 **THE COURT:** Was that person, the pharmacist, having a
15 conversation, or was that person in the area? I'm interested
16 in knowing who you may have had conversations with.

17 **JUROR NO. 9:** Right. I'm trying to think. I don't
18 know if he was sitting -- and then there was another guy behind
19 me, and we were all just kind of talking about what we had
20 seen, what we had talked about.

21 **THE COURT:** Can you identify any other person who
22 participated?

23 **JUROR NO. 9:** I don't think so.

24 **THE COURT:** All right. Did you have any
25 conversations with Juror No. 3, Ms. Spach?

1 **JUROR NO. 9:** Yes.

2 **THE COURT:** When was that?

3 **JUROR NO. 9:** Again, that was just sitting on the
4 bench. We were waiting. That probably would have been
5 yesterday.

6 **THE COURT:** All right. What was the nature of the
7 conversation?

8 **JUROR NO. 9:** Just talking about kind of what we
9 had -- what I had heard and just that a few things that I had
10 seen had upset me; but other than that, that was really the
11 nature.

12 **THE COURT:** All right. Did you express any opinions
13 in the case?

14 **JUROR NO. 9:** No.

15 **THE COURT:** Did anyone express any opinions?

16 **JUROR NO. 9:** No. It's too unclear still.

17 **THE COURT:** And have you formed an opinion? Don't
18 tell me what it is, if you have, but have you formed an opinion
19 yet?

20 **JUROR NO. 9:** I have not.

21 **THE COURT:** How long do you think your discussion was
22 yesterday?

23 **JUROR NO. 9:** Maybe five minutes.

24 **THE COURT:** Okay. I have been instructing the jury
25 not to talk about the case or any matter directed about the

1 case until they are instructed to deliberate.

2 **JUROR NO. 9:** Okay. I apologize. I thought that if
3 we were within our jury confinements that we could kind of talk
4 about what we had seen.

5 **THE COURT:** Do you understand my instruction now?

6 **JUROR NO. 9:** Yes, Your Honor.

7 **THE COURT:** Will you be able to follow that?

8 **JUROR NO. 9:** Yes.

9 **THE COURT:** Do you have an open mind about the case?

10 **JUROR NO. 9:** Absolutely.

11 **THE COURT:** Are you prepared to hear the rest of the
12 evidence?

13 **JUROR NO. 9:** Absolutely.

14 **THE COURT:** Will you follow the Court's instructions?

15 **JUROR NO. 9:** Yes.

16 **THE COURT:** Give me a minute. I am going to ask
17 Ms. Engle to take you outside just for a minute, and I may talk
18 to the lawyers for a minute. And if I have more questions, I
19 will let you know.

20 Thank you very much, ma'am.

21 (Juror No. 9 departed the courtroom.)

22 **THE COURT:** All right. Mr. Green?

23 **MR. GREEN:** No follow-up for this juror.

24 **MR. BRYSON:** No follow-up, Your Honor.

25 **THE COURT:** All right. Let me ask what the parties

1 propose ought to be the next step.

2 **MR. GREEN:** Well, she did reference a pharmacist,
3 having a discussion with a pharmacist, which the only one I
4 recall is Juror No. 7, Mr. Okafor. I don't know if the Court
5 needs to inquire of him what he heard and what his status is.
6 I will tell you now that the -- hold on just a minute.

7 Our view now, based on what I've heard -- and, again,
8 just -- the Court will ultimately judge the credibility of what
9 you heard, but our request is that you strike Juror 3 and
10 Juror 9 and seat the alternates in order.

11 **THE COURT:** Okay. Let me hear from the Defendant.

12 (Defendant's attorneys conferred.)

13 **MR. BRYSON:** We disagree. We feel like at this point
14 they should be able to continue with a very strong admonition,
15 whether privately or as a group, but they should continue.

16 **MR. GREEN:** Your Honor, the Court gave clear
17 instructions to the jury. Both of these jurors have
18 disregarded that instruction, which causes me some concern
19 about their ability to continue to follow the Court's
20 instructions.

21 Again, I'm listening. I found that Juror No. 1,
22 Ms. Lancaster -- I found her very credible about her
23 allegations about what she was seeing and hearing. Juror
24 No. 3, her denial was not credible. And then ultimately her
25 admission minimized, at best, what went on. So being

1 questioned by a federal judge -- and then also Ms. Alderman,
2 again, the initial denials and minimization seemed quite
3 inconsistent with what -- Juror No. 1 seemed quite credible.

4 So we have kind of multiple considerations. Even by
5 their admission, they have violated the Court's instruction,
6 and then, further, they have -- appear to, one, have been less
7 than forthright with the Court initially and, at best,
8 minimization. And, quite honestly, this is why we seat
9 alternates for just this circumstance.

10 **THE COURT:** Does anybody believe that any other juror
11 should be called in?

12 **MR. GREEN:** Well, I guess the issue is we have a
13 record of Ms. Alderman saying she spoke some to a pharmacist.
14 That's Juror No. 7, if I recall from the jury selection, and so
15 we may need to inquire of him if there was any conversation;
16 and, if so, where he's at.

17 **THE COURT:** Mr. Bryson, what is the Defendant's view
18 about that?

19 **MR. BRYSON:** Your Honor, the original report from
20 Ms. Lancaster was that there was only two and everybody else
21 was trying to ignore them. So while the Government has pointed
22 out that Ms. Alderman has not been credible, we don't believe
23 there is any reason to go any further with that.

24 **THE COURT:** Does anybody believe that each of the
25 jurors needs to be called in to determine what they heard, or

1 are they satisfied with where things are subject to, I guess,
2 the Government saying that maybe No. 7 should be brought in?

3 **MR. GREEN:** I think -- I would be satisfied, assuming
4 that Juror No. 7 doesn't further disclose some additional
5 conversations of other jurors. And then whatever the Court
6 decides, obviously, there would have to be -- whether those
7 jurors are excluded or taken out, there's obviously going to
8 have to be some curative -- not curative but rehabilitation of
9 the instruction to make sure they all can follow it. I think
10 that can be can done in a group setting.

11 **THE COURT:** Mr. Bryson?

12 **MR. BRYSON:** Is the Court suggesting that you're
13 going to bring them in each one by one and --

14 **THE COURT:** I'm asking whether the parties believe
15 that's necessary in this case. I would not do it as a group.
16 I would bring them in one by one.

17 **MR. BRYSON:** No, we are not asking that, Your Honor.

18 **THE COURT:** So do I understand then at this point the
19 Government's request is to strike Juror 3 and Juror 9, and the
20 Defendant opposes that? Is that correct?

21 **MR. GREEN:** That is the Government's request.

22 **MR. BRYSON:** And that is our -- we do oppose that.

23 **THE COURT:** Okay. And the Government wants me to
24 bring in Juror 7; is that right?

25 **MR. GREEN:** Yes, Your Honor.

1 **THE COURT:** All right. Because Juror No. 7 was
2 mentioned, I do think we will bring him in.

3 So if you would bring in Juror No. 7, Mr. Okafor.
4 (Juror No. 7 entered the courtroom.)

5 **THE COURT:** Good morning. You're Mr. Okafor?

6 **JUROR NO. 7:** Yes, I am.

7 **THE COURT:** No. 7?

8 **JUROR NO. 7:** Yes, sir.

9 **THE COURT:** All right. Have you either participated
10 in or heard any discussion among jurors about the evidence
11 during breaks in the jury room or outside of the courtroom?

12 **JUROR NO. 7:** Well --

13 **THE COURT:** Speak loudly so we can all hear you, if
14 you would, please, sir.

15 **JUROR NO. 7:** Sure. Nothing in particular in the
16 sense that -- it was more like myself when the discussion was
17 going on, I just -- so more in the line of that evidence is
18 almost, like, continuous. It is nonstop. It keeps going on
19 and on and on. I said something like -- give me a second so I
20 can recollect exactly -- more -- just paraphrasing. It was
21 more like it was continuous, nonstop. Similar things.

22 **THE COURT:** Who made this comment?

23 **JUROR NO. 7:** I said that. I said it was similar
24 things going on, but that's all.

25 **THE COURT:** Okay. When was this?

1 **JUROR NO. 7:** This was yesterday.

2 **THE COURT:** Okay. Any other conversation about the
3 evidence?

4 **JUROR NO. 7:** Not necessarily. There were two ladies
5 that kept talking about -- just -- I tried to take my mind from
6 listening a whole lot. But when they laugh, I said, wow, I
7 feel bored sometimes because it felt like the same thing over
8 and over. Because at some point yesterday, it felt like we
9 were watching the same said video over and over, the same
10 picture over and over. That is all. That's as far as it goes.

11 **THE COURT:** You said two ladies were talking?

12 **JUROR NO. 7:** Yes, having a discussion amongst
13 themselves.

14 **THE COURT:** Who were they?

15 **JUROR NO. 7:** The first two ladies you called here.
16 And --

17 **THE COURT:** Is that --

18 **JUROR NO. 7:** They weren't particularly discussing
19 whether the evidence was right or wrong. It was more like --
20 it was more like -- hold on. Let me recall very well. It was
21 more like those were a lot of bullets.

22 **THE COURT:** Were what?

23 **JUROR NO. 7:** A lot of bullets, pretty much.

24 **THE COURT:** Okay. How long did they have that
25 conversation?

1 **JUROR NO. 7:** Less than ten seconds. Ten seconds.
2 At least that's how much long I paid attention, but not much
3 more than that.

4 **THE COURT:** All right. Did you participate with
5 them?

6 **JUROR NO. 7:** No.

7 **THE COURT:** Have you formed any opinion in the case
8 yet?

9 **JUROR NO. 7:** No. I have no intention of forming one
10 until at least I hear everything.

11 **THE COURT:** Okay. Were there any other discussions
12 other than the one you told me about yesterday?

13 **JUROR NO. 7:** No. As far as I'm concerned, once that
14 happened, I think a lot of people around there just kind of
15 came up with excuses to step around. Some went to the
16 bathroom, went to get some cookies. I think it quickly
17 dissipated and switched topics to COVID and all that stuff.
18 But nothing more than that.

19 **THE COURT:** Do you know whether other jurors other
20 than the two women you talked about -- do you know whether the
21 other jurors participated in conversation?

22 **JUROR NO. 7:** No. When I made the --

23 **THE COURT:** No, they didn't or you don't know?

24 **JUROR NO. 7:** Not that I know of, at least as far as
25 I know. When I said continuous supply of evidence, everybody,

1 the people around me, they just laughed, and then we changed
2 topics quickly, wanted to cut it off --

3 **THE COURT:** And other than that conversation
4 yesterday, were there any others?

5 **JUROR NO. 7:** No, not that I know of.

6 **THE COURT:** Are you able to keep an open mind until
7 the end of the case?

8 **JUROR NO. 7:** I have no doubts about that. I will
9 keep an open mind. I think the prosecution is doing their job.
10 And the defense has an opportunity to do theirs.

11 **THE COURT:** And will you follow all of the Court's
12 instructions?

13 **JUROR NO. 7:** Absolutely.

14 **THE COURT:** Thank you, sir. You can put your mask
15 back on. Ms. Engle will take you out, and if I need to ask you
16 some more questions, I will let you know right away. Thank you
17 for coming in.

18 (Juror No. 7 departed the courtroom.)

19 **THE COURT:** Government want to be heard?

20 **MR. GREEN:** No further questions. And we would not
21 request that Mr. Okafor be struck, based on his answers.
22 Certainly anybody who had to sit through yesterday afternoon,
23 there was a continuous stream of evidence.

24 **THE COURT:** All right. Mr. Bryson, what's the
25 defense's view?

1 **MR. BRYSON:** We have no follow-up questions, and we
2 don't want him -- any action taken against him.

3 **THE COURT:** Based on that, does either side think at
4 this point I need to question any other jurors, or are you
5 satisfied?

6 **MR. GREEN:** The Government is satisfied.

7 **MR. BRYSON:** We're not asking for any further
8 inquiry.

9 **THE COURT:** All right. Give me just a minute.

10 (Pause in the proceedings.)

11 **THE COURT:** Okay. I'm going to make some findings.
12 That is first that Juror No. 1's report was credible, and she
13 reported two instances at least of jurors -- two jurors
14 talking, No. 3 and No. 9, and making comments that related to
15 the evidence, described as general chatter, but it was about
16 the evidence. One occurred on Tuesday; another conversation
17 occurred Wednesday afternoon during a break.

18 Juror No. 3 was reported to be the instigator of
19 these conversations, but No. 9 was involved as well. Juror 1
20 could not tell if anybody had formed any opinion.

21 The conversation on Wednesday, the second of the two,
22 was roughly ten minutes in length. It would appear that the
23 other jurors tried to distance themselves from this
24 conversation, indicating some recognition that it's
25 inappropriate and contrary to the Court's instructions.

1 According to Juror No. 1, they talked about -- two
2 women, No. 3 and No. 9, talked about evidence and witnesses and
3 asked questions, but nobody spoke to them. This occurred in
4 the jury room.

5 When I brought in Juror No. 3, she denied any such
6 discussions. Based on the totality of the interviews, I find
7 her denial to be untruthful. She tried to grossly minimize it,
8 and she clearly violated my directions on multiple occasions.
9 I don't think they could have been any clearer. When she was
10 brought into Court, she was evasive and ultimately untruthful,
11 and she appears to be the instigator.

12 Juror No. 9 was more forthcoming. She seemed to
13 express an opinion that she didn't realize they could not at
14 least chat among themselves in some respect. Juror No. 9 did
15 indicate that she had an open mind, that she would follow the
16 Court's instructions, and that she had not formed any opinion.

17 Based on this record, I'm going to strike Juror No.
18 3. She's clearly violated the Court's instructions and, worse,
19 was -- essentially lied to my face when she came in and was
20 questioned. She instigated this. I do not know whether she
21 has an open mind at this point. I think it's hard to
22 understand whether she would, in light of the fact that she's
23 been untruthful about other matters.

24 Juror No. 9 was more forthcoming, and I sensed some
25 remorse for what she expressed as perhaps a misunderstanding of

1 the scope of my instruction, but she did indicate that she
2 would keep an open mind and continue.

3 As to Juror No. 7, he was implicated potentially, I
4 believe, by Ms. Alderman, No. 9; but, in any event, he said he
5 would keep an open mind and he tried to distance himself from
6 the conversation, and he appears to be truthful in this regard.
7 And neither party seeks to have him struck.

8 So I am going to strike Juror No. 3, replace her with
9 our first alternate, Ms. Fraizer. I am going to keep Juror
10 No. 9 at this point. The Defendant does not ask that Juror
11 No. 9 be struck.

12 That's correct; right, Mr. Bryson?

13 **MR. BRYSON:** Correct. We did not ask for any juror
14 to be struck.

15 **THE COURT:** Hold on just a minute. I do find that
16 misconduct alleged did occur. The question is whether it's
17 prejudiced the rights of the parties in the case. I'm finding
18 that, as to Ms. Spach, her conduct requires her to be struck as
19 a juror or, at least in my discretion, I'm striking her as a
20 juror.

21 I do not find that the conduct of any of the jurors
22 so far prejudices the right of the Defendant to a fair trial or
23 to the Government.

24 Does anybody want to be heard on that? Mr. Green?

25 **MR. GREEN:** No, Your Honor.

1 **THE COURT:** Mr. Bryson?

2 **MR. BRYSON:** No.

3 **THE COURT:** I'm finding that the misconduct that has
4 occurred has not prejudiced either party's rights.

5 Do you agree or disagree?

6 **MR. BRYSON:** We do not disagree.

7 **THE COURT:** You do not disagree?

8 **MR. BRYSON:** We agree with the Court.

9 **THE COURT:** Okay. All right. Okay. So, Ms. Engle,
10 if you would, let Ms. Spach know her services will not be
11 needed any longer. I'll decide later whether there is going to
12 be separate punishment for her.

13 In fact, I think if you'll just bring her into the
14 courtroom, I will tell her that. And then we'll bring the jury
15 in reconstituted after that. Have her bring her things so she
16 does not go back to the jury room when she's done. She'll
17 leave straight from the courtroom and exit the building.

18 (Juror No. 3 entered the courtroom.)

19 **THE COURT:** Ms. Spach, I am going to discharge you as
20 a juror. Your services will no longer be required in this
21 case. I do that with the admonition that I found that you've
22 been discussing the evidence to some extent with at least one
23 other juror that's contrary to my instructions. You also came
24 in here, though, and did not admit to that and denied that.

25 So I'll decide later what, if anything, I will do

1 about that, but at this point -- you don't need to say anything
2 at this time. But I just want to let you know that's the
3 reason that you are being let go. We're going to continue the
4 trial without you. So your services will not be needed. So
5 you do not need to, nor should you, go back to the jury room.
6 You'll be directed outside the building.

7 All right. Thank you, ma'am.

8 **JUROR NO. 3:** I'm sorry. I think I misunderstood
9 your rules.

10 (Juror No. 3 exited the courtroom.)

11 **MR. BRYSON:** Is she going to bring the jury back in
12 now?

13 **THE COURT:** In a moment.

14 **MR. BRYSON:** At some point -- and I know she's not
15 here, but at some point, I just wanted to note our exception to
16 the Court's record -- for the record to the Court's ruling.

17 **THE COURT:** Okay. To the extent --

18 **MR. BRYSON:** The excusal of Juror No. 3.

19 **THE COURT:** Oh, okay. You had objected. I
20 understand. You don't need to note an exception, but it's in
21 the record.

22 So the next question I have is at some point the
23 jurors are going to be wondering about what's going on, if they
24 don't already have some inkling. It would be my inclination to
25 bring them in, continue the evidence and then, when we break,

1 to remind them at that point and to stress what their duty is.

2 Does anybody want me to proceed in any other fashion?

3 **MR. GREEN:** No, Your Honor.

4 **MR. BRYSON:** Are you going to move one of the
5 alternates up?

6 **THE COURT:** Yes. Number -- Alternate 1, Ms. Frazier,
7 will become Juror No. 3, Ms. Spach's spot.

8 **MR. BRYSON:** Yes, Your Honor.

9 **THE COURT:** Okay. Bring them in.

10 If you would hold the door just a minute. Ms. Engle
11 did tell me this morning, just so that you know, Juror No. 9
12 apparently had a grandmother pass away this week. The funeral
13 is tomorrow. But my understanding is she's not planning to
14 attend.

15 Does anybody want to be heard about that?

16 **MR. GREEN:** No, Your Honor.

17 **MR. BRYSON:** No, Your Honor.

18 **THE COURT:** Okay.

19 (The jury returned to the courtroom at 10:04 a.m.)

20 **THE COURT:** Ms. Engle, the second alternate can move
21 up to the front row now, if she wishes.

22 Please be seated, everyone.

23 Good morning, ladies and gentlemen. I apologize for
24 the delay. We are now ready to proceed. And the Government
25 may call its next witness.

1 **MR. PRINCIPE:** Thank you, Your Honor. The Government
2 calls Dr. Michelle Aurelius.

3 **MICHELLE AURELIUS, M.D.,** GOVERNMENT'S WITNESS, being first duly
4 affirmed, at 10:06 a.m. testified as follows:

5 DIRECT EXAMINATION

6 **BY MR. PRINCIPE**

7 Q Would you state your name.

8 A Dr. Michelle Aurelius. For the record, my last name is
9 spelled A-U-R-E-L-I-U-S.

10 Q And, Dr. Aurelius, who do you work for?

11 A I work for the Office of the Chief Medical Examiner under
12 the Department of Health.

13 **THE COURT:** You may remove your mask, ma'am, if you
14 would. That way we can see and hear you better.

15 **THE WITNESS:** Thank you, Your Honor.

16 **BY MR. PRINCIPE**

17 Q And are you a forensic pathologist?

18 A Yes.

19 Q Can you explain to the jurors what that is?

20 A As a forensic pathologist, I am a medical doctor, and the
21 patients that I serve are all deceased. And we have
22 jurisdiction over all sudden, unexpected, and violent deaths
23 here in the state of North Carolina.

24 And as a forensic pathologist, I perform autopsy
25 examinations and work as a medical examiner, the chief examiner

1 for the State.

2 Q Are there different kinds of pathologists?

3 A Yes. There are a multitude of different kinds of
4 pathologists.

5 Q And what does the forensic portion of forensic pathology
6 refer to?

7 A So the forensic portion is essentially sort of defined
8 as -- so pathology is sort of disease or injury, and the
9 forensic part is how that applies to the law.

10 Q Okay. Can you please explain to the jurors your current
11 position, how long you have had held it, and then the prior
12 positions you've held?

13 A I am the chief medical examiner for the State of North
14 Carolina. I have been in this position for about two years.
15 And I have brought my CV, and I have it in front of me so I can
16 make sure I get all of the dates right for you all.

17 Prior to that -- actually, during that time period, I have
18 also served as the interim chief toxicologist for the State
19 Laboratory at the Office of the Chief Medical Examiner for
20 almost a year. I was also the deputy chief medical examiner
21 here in North Carolina from 2015 to 2019. So I came here to
22 North Carolina in 2015 as your deputy chief medical examiner.

23 Prior to that, I was in New Mexico. In New Mexico, we had
24 a statewide medical examiner system like we do here in North
25 Carolina. And there I was the assistant chief medical

1 examiner, and I had that position for -- from 2011 to 2015.

2 Also during that time period, I had an appointment at the
3 University of New Mexico, and I was the associate professor in
4 pathology. And prior to that, I was an assistant professor of
5 pathology.

6 From 2008 to 2015 in New Mexico, as a part of my duties, I
7 was also the hospital autopsy director for the University of
8 New Mexico. And I was an associate medical investigator at the
9 Office of the Chief Medical Examiner from 2005 to 2011 before I
10 transitioned to become the assistant chief medical examiner.

11 And prior to that and during that time period, I was also
12 a cohospital autopsy director before they decided to put all
13 the responsibility on me.

14 Q And do you also hold two degrees?

15 A I have a medical degree, yes, and I have a bachelor's of
16 science degree.

17 Q And when did you obtain those and what from universities?

18 A I obtained my medical degree from the Oregon Health
19 Sciences University in 1999, and I obtained my bachelor's of
20 science in general science -- and I'm going to look here to
21 make sure I get it right -- way back in 1993.

22 Q Are you also board-certified in any fields?

23 A Yes. I am a board-certified forensic pathologist, and I'm
24 board-certified in forensic pathology, anatomic pathology, and
25 clinical pathology.

1 Q And who does that certification, what organization?

2 A It is the American Board of Pathology.

3 Q Is it difficult to become board-certified in a field, or
4 what is required to become board-certified in a field?

5 A It is a lot. So it requires residency training as a
6 medical doctor. So that means that there is time invested for
7 a multitude of years. For me to be board-certified in all of
8 these areas, it was six years of additional training after
9 medical school to be able to sit for my anatomical clinical and
10 forensic pathology boards.

11 The examination -- initial examination process occurs over
12 one to two days. And it's an exam with a microscope and lots
13 of questions, and then there is a maintenance of certification
14 where every two years I have to submit evidence of my ongoing
15 education, my certification and continue examination process so
16 that I can maintain the standards for my practice of pathology.

17 Q Do you also hold medical licenses?

18 A Yes.

19 Q Which ones do you hold?

20 A I have a medical license here in North Carolina to
21 practice medicine and another one also in the state of New
22 Mexico to practice medicine.

23 Q Have you published papers?

24 A Yes.

25 Q Have you taught other medical students?

1 A Yes.

2 Q Have you conducted lectures based on your experience?

3 A Yes.

4 **MR. PRINCIPE:** Your Honor, the Government would
5 tender Dr. Michelle Aurelius as an expert in forensic
6 pathology.

7 **THE COURT:** Do you want to be heard?

8 **MR. FOSTER:** No objection.

9 **THE COURT:** All right. She may give her opinions.

10 **BY MR. PRINCIPE**

11 Q Dr. Aurelius, did you end up performing an autopsy
12 examination on Hong Zheng?

13 A Yes.

14 Q And when did you conduct that examination?

15 A That was April 18, 2018. And we started the examination
16 process at about 9:54 in the morning.

17 Q Can you just explain: What is the process from beginning
18 to end of what an autopsy examination consists of?

19 A So an autopsy examination for our patient population is
20 taking a look to help determine cause and manner of death. For
21 an autopsy examination, our patients arrive to us within a body
22 bag. They are transported locally from where they are usually
23 discovered or sometimes from a hospital. When they arrive to
24 us, we verify who they are with their identification tags, and
25 then we undergo an autopsy examination.

1 An autopsy examination starts by looking at the outside of
2 the body first as our patients are received. So that's taking
3 a look at the top to bottom, head to toe, front to back and
4 looking for any type of evidence of injury, any type of natural
5 disease, and any documentation that needs to be made or looking
6 for any evidence that might need to be collected.

7 And this process continues through multiple layers. We
8 then remove any medical equipment and the clothing and again
9 look at the front and the back of the body. And then after
10 that, doing the same again after the patient has been cleaned,
11 again viewing front and back for any injury or natural disease
12 or the collection of any type of evidence.

13 And after that, we move on to the internal examination.
14 So a surgical-type incision is made in our patients in a Y
15 incision so we can look at the organs as they sit inside of the
16 body as well as the tissues inside of the body. We will get
17 all of them inside of the body cavities as well as inside of
18 the neck, and then we also look inside of the head after making
19 an incision on the scalp and reflecting it and removing the top
20 portion of the skull.

21 The organs are then removed and each of them are examined
22 separately, again looking for any kind of evidence, natural
23 disease, or any type of injury.

24 During this process, at any stage, photographs can be
25 taken. They are all taken under my direction. Some of them

1 are taken by my hands. In addition to that, I can order
2 testing that can be radiographs, meaning x-rays taken of the
3 body in different areas. I can collect samples and send them
4 off for any type of testing that needs to happen.

5 And then after that, putting together a report and working
6 on that to determine cause and manner of death for my patients.

7 Q Are there other people who may be present during your
8 autopsy examination?

9 A Yes.

10 Q And what are their roles?

11 A They can have different roles. We typically have an
12 autopsy assistant present with us. Sometimes we have another
13 pathologist who also may be in the room with us because we can
14 have more than one pathologist doing an examination at a time.
15 Those are typically the people who are helping and assisting me
16 in the autopsy.

17 Q Do you sometimes collect evidence that is then turned over
18 to law enforcement?

19 A Yes.

20 Q Turning your attention then to the autopsy examination you
21 performed on Hong Zheng, were you able to determine a cause of
22 death?

23 A Yes.

24 Q What did you determine was the cause of death?

25 A Gunshot wound of the head.

1 Q Did you also document any biographical information about
2 Mr. Zheng?

3 A Yes.

4 Q What information did you document?

5 A Mr. Zheng was a 42-year-old Asian gentleman. His first
6 name was Hong and his last name was Zheng. I apologize if I am
7 mispronouncing his name in any way. He is a gentleman. And
8 then I went through and documented additional findings for the
9 autopsy during the examination.

10 Q Can you tell the jurors about the wounds that you may have
11 seen on Mr. Zheng?

12 A In relation to gunshot wounds, Mr. Zheng had two gunshots
13 wounds of his head. They both entered on the left side of his
14 face and they both had retained projectiles.

15 The retained projectiles, one was a core, a lead core for
16 a bullet, and the other was a jacket, as if the projectile had
17 separated before going into the skin.

18 A gunshot wound on Mr. Zheng on the left side of the head
19 on his face near his cheek went through the skin, the
20 underlying subcutaneous tissue and muscle, went through the
21 mandible, which is your jawbone, on the left-hand side, went
22 through the tissue and the muscle underneath and it penetrated
23 the first and -- I apologize -- the second and the third
24 cervical vertebrae and lodged there. That was the projectile
25 core, so the internal portion of a bullet.

1 And the cervical vertebrae are numbered No. 1 at the top
2 where it connects with your skull, and then as the numbers go
3 up, we descend down the cervical spine which encases the spinal
4 cord.

5 Associated with where the lead core was recovered from, he
6 had a tear on his cervical spine. So his spinal cord that is
7 chambered within the bones of the cervical neck bones was torn.

8 In addition to that, he had, as I mentioned, another
9 entrance wound closer to the chin on the left side of his face.
10 This went through the skin and the subcutaneous tissue, the
11 underlying musculature, and grazed along the mandible. So it
12 skimmed along the mandible. It went through the underlying
13 soft tissue and the musculature of the neck and was recovered
14 on the left lateral side of the neck in the subcutaneous and
15 muscular tissue deep beneath it.

16 What was recovered was a jacket, as if the bullet, again,
17 had separated before entering Mr. Zheng, causing two injuries
18 from one projectile.

19 In addition to that, surrounding both of these wounds was
20 something called pseudo-stippling. And the pseudo-stippling is
21 a collection of injuries around the wounds of varying size,
22 some very small, some large, and this is when an object hits
23 the skin around the entrance gunshot wounds and often falls
24 away.

25 This can occur when there is an intermediary object

1 between a decedent's skin and the firearm. So if the firearm
2 travels through something, the bullet itself can fragment into
3 pieces and crash into the side of the skin, causing this type
4 of injury.

5 In addition to that, if the bullet or the projectile goes
6 through something, it can fragment whatever that object is, and
7 those small fragments then have velocity and are pushed against
8 the decedent's skin.

9 In addition to that, Mr. Zheng has some pseudo-stippling
10 on his left anterior lateral upper arm, so that's the front and
11 the side of his upper arm, with sparing of the area where his
12 shirt covered.

13 Q Dr. Aurelius, with regard to intermediate objects that
14 could cause pseudo stippling, is a glass pane or windshield
15 from a vehicle something that could be one of those
16 intermediary objects?

17 A Yes. And I did collect glass from his body around the
18 entrance wounds and also within the body bag.

19 Q Did you also look at the path of the wounds in the body?

20 A Yes.

21 Q Could you explain those to the jurors?

22 A So both of the jacket and the core both traveled in
23 relationship to the decedent's anatomic position. So let me
24 start with that.

25 So when I describe how a trajectory or how a bullet

1 travels through an individual, it's as if they are standing
2 straight up, nose forward, palms forward looking at you. And
3 the left and the right sides relate to the left and the right
4 sides of our patients or our decedents, not mine, when I'm
5 looking at someone. So the wound tracts traveled from
6 Mr. Zheng's left to right, front to back, and downward.

7 Q Did you collect the projectiles from inside Mr. Zheng's
8 head?

9 A Yes.

10 Q And what did you do with those objects?

11 A I photographed them, I packaged them, and I put them in
12 our evidence log so that it could be released.

13 Q Were there some other items that were also turned over to
14 law enforcement?

15 A Yes.

16 Q I would like to show you Government's Exhibit 293. It
17 will appear in just a moment on your monitor.

18 Do you recognize that document?

19 A Yes, I do.

20 Q And what is that document used for?

21 A This is an Evidence and Inventory Disposition Form. This
22 helps me document what I have collected as evidence for my
23 patients on their case. And it documents not only that --
24 who's collected it, but it also documents who that is released
25 to.

1 Q And that is a standard form that your office uses?

2 A Yes.

3 Q And does this form here -- is it filled out with
4 information?

5 A Yes.

6 Q And does that information pertain to your autopsy
7 examination of Hong Zheng?

8 A Yes.

9 **MR. PRINCIPE:** Your Honor, the Government would move
10 Government's Exhibit 293 into evidence.

11 **THE COURT:** Admitted.

12 **MR. PRINCIPE:** Permission to publish that?

13 **THE COURT:** You may.

14 **MR. PRINCIPE:** If we could zoom in on the top
15 portion?

16 **BY MR. PRINCIPE**

17 Q Does that contain your name, the date of your examination,
18 and the patient that you collected the evidence from?

19 A Yes.

20 **MR. PRINCIPE:** If we can zoom in on the middle
21 section?

22 **BY MR. PRINCIPE**

23 Q Does that document the items that you collected and later
24 turned over to law enforcement?

25 A Yes.

1 Q At the bottom, did that include glass fragments and then
2 the projectiles that you described taking from Mr. Zheng's
3 head?

4 A Yes, and neck.

5 Q Thank you. Head and neck.

6 And then also in the bottom portion, it says "chain of
7 custody." Does that have your name listed on there?

8 A Yes.

9 Q Does it also list the name of Lindsey Kincaid?

10 A Yes.

11 Q Thank you. I'm now showing you Government's Exhibits 294
12 and 295.

13 Do you recognize both of those photographs?

14 A Yes.

15 Q What are those photographs of?

16 A These are photographs of the projectiles that I recovered
17 from Mr. Zheng, and you can tell that because his name is
18 written in my terrible handwriting at the top, as well as the
19 case number. Just like with any of us when we go and see our
20 physician providers, we have a medical record number; when my
21 patients came to me, they also have a medical record number.
22 In addition to that, you can see my signature at the bottom as
23 well as the dates.

24 And these are two photographs of the same projectile
25 jacket. The first one on my screen, it's on my left,

1 projectile jacket times one, left anterior neck. So this is
2 the one that was recovered from the gunshot wound that entered
3 around the area of the chin.

4 Q Thank you.

5 **MR. PRINCIPE:** Your Honor, Government moves
6 Government's Exhibits 294 and 295 into evidence.

7 **THE COURT:** Admitted.

8 **MR. PRINCIPE:** And permission to publish those?

9 **THE COURT:** You may.

10 **BY MR. PRINCIPE**

11 Q So Government's 294, that is a top-down view of that
12 object?

13 A That is correct. And you can almost see how the interior
14 is hollow at this time because the projectile core is absent
15 from it, has separated.

16 Q Okay. And then Government's Exhibit 295 shows the side
17 view of that same object?

18 A That is correct.

19 Q I'm now showing on your screen Government's Exhibit 296.
20 What is that a photograph of?

21 A So this is a photograph of the projectile lead core that I
22 recovered from Mr. Zheng. This was recovered from his
23 posterior lateral neck, embedded within the second and third
24 cervical vertebrae, so the bones around his neck.

25 Q Does that include the same kinds of information that you

1 talked about on the prior two exhibits?

2 A Yes.

3 **MR. PRINCIPE:** Your Honor, Government moves
4 Government's Exhibit 296 into evidence.

5 **THE COURT:** Admitted.

6 **MR. PRINCIPE:** And permission to publish that?

7 **THE COURT:** Yes.

8 **MR. PRINCIPE:** If we can zoom in on the object.

9 **BY MR. PRINCIPE**

10 Q Does that have a different coloration and shape than the
11 prior object?

12 A Yes.

13 **MR. GREEN:** I have no additional questions, Your
14 Honor.

15 **THE COURT:** Any cross?

16 **MR. FOSTER:** I have no questions.

17 **THE COURT:** All right. Thank you. You may step
18 down, ma'am. You can put your mask back on.

19 **THE WITNESS:** Thank you. May I be excused?

20 **MR. PRINCIPE:** May this witness be excused, Your
21 Honor?

22 **THE COURT:** Any objection?

23 **MR. FOSTER:** No, Your Honor.

24 **THE COURT:** All right. You're excused. You are free
25 to leave. Thank you.

1 (At 10:29 a.m., witness excused.)

2 **MR. PRINCIPE:** Your Honor, the Government next calls
3 Michael Gurdziel.

4 **MICHAEL GURDZIEL,** GOVERNMENT'S WITNESS, being first duly
5 affirmed sworn, at 10:29 a.m. testified as follows:

6 **THE COURT:** You may remove your mask so we can see
7 and hear you clearly.

8 **THE WITNESS:** Thank you, sir. Appreciate it.

9 **THE COURT:** Please proceed.

10 DIRECT EXAMINATION

11 **BY MR. PRINCIPE**

12 Q Would you please state your name.

13 A It's Michael Gurdziel. It's spelled G-U-R-D-Z-I-E-L.

14 Q And what position do you hold?

15 A I'm a forensic scientist at the North Carolina State Crime
16 Laboratory in Raleigh in the Trace Evidence Section.

17 Q What is the North Carolina State Crime Laboratory?

18 A It's the State-run laboratory that performs scientific
19 analysis as it relates to a court of law.

20 Q Did that laboratory at one point operate under the North
21 Carolina State Bureau of Investigation?

22 A That's correct.

23 Q But does it currently?

24 A No, it's a separate entity under the North Carolina
25 Department of Justice.

1 Q How long have you worked as a forensic scientist at the
2 North Carolina State Crime Laboratory?

3 A For over 20 years now.

4 Q And what is trace evidence?

5 A Trace evidence is any small amount of material that when
6 identified and/or compared to a known substance is useful in
7 forming some type of judgment or conclusion as it relates to a
8 court of law. Examples would include gunshot residue, paint,
9 glass, fire debris, looking for accelerants.

10 Q And how long have you worked in the Trace Evidence Section
11 of the State Crime Laboratory?

12 A Since 2006.

13 Q So what degrees do you hold?

14 A I have a bachelor's degree in chemistry with an additional
15 major in biology.

16 Q Do you have any professional affiliations or
17 certifications?

18 A I do. I'm certified through the American Board of
19 Criminalistics, and I am a member of the American Chemical
20 Society and American Society for Trace Evidence Examiners.

21 Q At some point, did you begin to develop some
22 specialization within trace evidence for glass comparison?

23 A Yes, I did.

24 Q And what kind of training, experience, and knowledge have
25 you developed over the years with regard to glass comparison?

1 A In September of 2010, I completed a training program at
2 the North Carolina State Crime Laboratory designed to teach me
3 the skills and techniques needed to perform glass comparisons.

4 External training I received in addition to that included
5 a course at the McCrone Research Institute in Chicago, Illinois
6 regarding glass analysis, and that was back in 2010; a glass
7 evidence course at the Florida International University in
8 Miami in 2011; also completed a forensic glass analysis course
9 through West Virginia University, and that was back in 2014.

10 Additionally, I have training specifically regarding the
11 types of instruments used in glass comparisons, training on the
12 use of the Glass Refractive Index Measurement system, also
13 known as the GRIM, and training regarding the use of the x-ray
14 fluorescence spectrometer and also training regarding the
15 polarized light microscope.

16 Q Thank you. And have you also testified one time as an
17 opinion witness with regard to glass comparison?

18 A Yes, I have.

19 **MR. PRINCIPE:** Your Honor, the Government would
20 tender Michael Gurdziel as an expert in glass analysis,
21 identification, and comparison.

22 **MR. BRYSON:** No objection, Your Honor.

23 **THE COURT:** All right. He may give his opinions.

24 **BY MR. PRINCIPE**

25 Q Mr. Gurdziel, can you describe the room or location where

1 you would do a glass comparison examination?

2 A So that would be in my laboratory workspace. I would
3 perform a portion of the analysis identifying whether glass is
4 present. I'm observing the physical characteristics of the
5 glass. That's an area -- that's my own laboratory work space.

6 I also have access to the XRF, or x-ray fluorescence
7 spectrometer, that's in our main instrument room that's on the
8 third floor of the State Crime Laboratory in the trace evidence
9 section. And also that is where our Glass Refractive Index
10 Measurement system, also known as the GRIM, is located.

11 Q And is the North Carolina State Crime Laboratory a
12 controlled-access facility?

13 A Yes, it is.

14 Q And can you describe the general process by which evidence
15 is submitted to the lab and then moves its way through the
16 laboratory to your work space?

17 A Sure. Evidence is received from agencies across the state
18 of North Carolina at our Raleigh facility through our evidence
19 control unit. There, evidence is received in a sealed
20 condition along with an evidence submission form. It is given
21 a case number, a laboratory case number, and each item is given
22 a specific laboratory item number.

23 Q Now, does the -- so the lab maintains its own numbering
24 system for items that come in?

25 A Yes, sir, that's correct.

1 Q Is that often different than an item number that has been
2 assigned to it by the submitting agency?

3 A Yes. The item number is given -- yes, that's correct.

4 Q I'm going to show you Government's Exhibit 306.

5 Do you recognize that document?

6 A Yes.

7 Q What kind of document is that?

8 A Government's Exhibit 306 is an evidence submission sheet
9 that shows what agency submitted evidence in this case and what
10 items -- what their agency item number is and as it relates to
11 our laboratory item number.

12 Q Okay. And was this document pertaining to the Durham
13 Police Department?

14 A Yes, that's correct.

15 Q And what was the date of the submission?

16 A The date of the submission was 5/31/2018.

17 Q And did that -- did those items listed on that form -- are
18 they associated with an agency case number?

19 A Yes, that would be the Durham Police Department's Case
20 No. 18-011976.

21 **MR. PRINCIPE:** Your Honor, the Government moves to
22 introduce Government's Exhibit 306.

23 **THE COURT:** Admitted.

24 **MR. PRINCIPE:** Permission to publish that?

25 **THE COURT:** You may.

1 **MR. PRINCIPE:** First, let's zoom in on the top
2 portion of the document.

3 **BY MR. PRINCIPE**

4 Q That has the Durham Police Department and your agency, the
5 North Carolina State Crime Laboratory?

6 A Yes, that's correct.

7 Q And the submission date and time?

8 A Yes, sir.

9 Q And now if we focus on the Evidence Item Description area,
10 can you go through each item and first identify the laboratory
11 identifying information?

12 A Sure. The laboratory case number that this case was given
13 was R201806525. There were four laboratory item numbers for
14 the four different items of evidence that the Durham Police
15 Department submitted in this case.

16 Laboratory Item No. 28 was glass fragments from roadway at
17 scene, and that corresponds to Durham Police Department's Case
18 No. 18-011976, Item No. 35.

19 The next item number was laboratory Item 29, glass
20 fragments under right front seat of white Lincoln MKX. That
21 had the same Durham case number with Durham Item No. 55.

22 The third item that was submitted in this case was lab
23 Item No. 30, glass fragments from left rear compartment of
24 white Lincoln MKX. It is the same Durham case number, their
25 Item No. 56.

1 The fourth item that was received in this case was given
2 lab Item No. 31. That was glass fragments from left rear door
3 interior of white Lincoln MKX. And it was the same Durham Case
4 No. 18-011976, and that was the Durham Police Department's Item
5 No. 57.

6 Q Thank you.

7 I would like to show you an item that's already in
8 evidence. This is Government's Exhibit 102.

9 Can you see a case number written in the upper left-hand
10 corner where it says IR number?

11 A Yes, I do.

12 Q Is that the same number that was just on that form?

13 A Yes. 18-011976. That would be the Durham Police
14 Department's agency case number.

15 Q Do you see that there is an Item No. 35 listed on there?

16 A That's correct.

17 Q That corresponds to one of the items that you looked at
18 during your examination?

19 A That was the Durham Police Department's Item No. 35, which
20 corresponds to the laboratory Item No. 28.

21 Q And then when items move through your laboratory, do they
22 get a barcode sticker on them?

23 A Yes, they are given a barcode sticker identifying that
24 item when it's received into the evidence control unit.

25 Q Okay. Is this on your screen one of those barcoded

1 stickers?

2 A Yes, sir. It has the laboratory case number and the
3 corresponding lab item number.

4 Q What is that item number on this exhibit, Government's
5 Exhibit 102?

6 A Lab Item No. 28.

7 Q And that corresponds to the document that we just looked
8 at; correct?

9 A Yes, sir. Lab Item 28 is Durham Police Department's item
10 35.

11 Q I'm going to open up the envelope for that exhibit.
12 Do you recognize that object?

13 A Yes, sir. That's lab Item No. 28. I recognize it from
14 the barcode sticker that I placed on it when I opened the outer
15 packaging, and it also has my initials and the date that I
16 marked the evidence.

17 Q What is inside of this object?

18 A That would be the glass from roadway at scene.

19 Q What is this object that was in there with it?

20 A That would be -- that would contain the microscope slide
21 that I used as part of my examination to measure the refractive
22 index of the glass.

23 Q Okay. Let's pause for a moment right here. Can you
24 explain to the jurors, what is glass?

25 A Scientifically speaking, glass is an inorganic product of

1 fusion cooled to a rigid state without crystallization. I
2 think we all have a pretty good understanding of glass. It is
3 everywhere in our environment. Examples would include flat
4 glass, which -- window glass, automotive glass, container
5 glass, bottles, eyeglasses, fiberglass, glass wool would be a
6 couple of examples.

7 Q And then how is it possible, from the perspective of your
8 discipline, to even compare samples of glass to one another?
9 What are you looking for?

10 A Once we have identified that glass is present, we will
11 look at the physical characteristics of the glass, the
12 thickness, whether it has a tint or color to it. We'll look at
13 what type of glass it is. We'll then look at the elemental
14 composition of the glass using an instrument called an x-ray
15 fluorescence spectrometer.

16 And then, additionally, we'll measure the refractive index
17 of the glass, and that means how much that glass bends light as
18 the light passes through it. And those are the types of
19 characteristics that we're looking at when comparing a
20 questioned glass to a known glass standard.

21 Q Do you typically do those three stages each time for each
22 item?

23 A Well, we start with the -- looking at the physical
24 characteristics of the glass. If there is any difference noted
25 in the physical characteristics, say, maybe there is a

1 different color tint to it, or a different thickness, then we
2 have -- then I will have determined that, hey, this glass is
3 not consistent with the known standard or the known sample.
4 Therefore, the analysis will conclude at that point.

5 However, if all the physical characteristics are
6 consistent with the known, then I'll look at the -- I'll
7 analyze and determine the elemental composition of the glass,
8 comparing what elements are present to see if those are
9 consistent.

10 If those elements are consistent, then I'll measure the
11 refractive index and see if there are any differences in
12 refractive index between the questioned glass and the known
13 glass.

14 Q I'm going to show you Government's Exhibit 307.

15 Do you recognize that document?

16 A Yes, I do recognize Government's Exhibit 307 as a copy of
17 my laboratory report in this case.

18 Q Is that just the first two pages of that lengthy report?
19 We'll show you the next page.

20 A Well, the laboratory report is a two-page document.

21 Q Okay. So does this laboratory report document your -- the
22 conclusions of your examination of the items that were
23 submitted, those items that were in Government's Exhibit 306?

24 A That is correct.

25 Q Okay. And does it list the same items that were on that

1 other form here at the top of the document?

2 A Yes, it does. Laboratory Item Nos. 28, 29, 30, and 31 are
3 listed on my laboratory report.

4 Q Okay. Then below that, does it show the type of exam and
5 then your conclusions?

6 A Yes, it does, indicating the type of exam is a glass
7 analysis, and then it gives my results of examination in this
8 case.

9 Q All right. Thank you.

10 **MR. PRINCIPE:** The Government would move Government's
11 Exhibit 307 into evidence.

12 **THE COURT:** Admitted.

13 **BY MR. PRINCIPE**

14 Q And what was your conclusion with regard to your
15 comparison of Item No. 28, which was Durham Police Department's
16 Item 35, glass fragments from roadway at scene, with Item
17 No. 29, glass fragments under right front seat of white Lincoln
18 MKX, Durham Item 55?

19 A Analysis showed the black-tinted, broken glass fragments
20 in Item 28 were consistent in physical properties, refractive
21 index, and elemental composition to the black-tinted, broken
22 glass fragments in Item No. 29. These fragments could have
23 shared a common origin.

24 **MR. PRINCIPE:** And permission to publish that, Your
25 Honor?

1 **THE COURT:** You may.

2 **BY MR. PRINCIPE**

3 Q What was -- what comparison did you perform between Item
4 No. 28 -- or lab Item No. 28 and lab Items 30 and 31?

5 A I performed an examination of the physical characteristics
6 of the glass between Item 28 and Items 30 and 31 and found
7 those to be consistent.

8 Q You found the physical properties to be consistent?

9 A Correct.

10 Q Did you perform the second or third stage of analysis for
11 those two additional item numbers?

12 A Not for those two item numbers.

13 Q Why not?

14 A Since Item No. 29 was consistent with Item No. 28, I did
15 not conduct the analysis of the elemental composition and the
16 refractive index for Item Nos. 30 and 31, since an association
17 was already made between the Item 28 and the Item No. 29.

18 Q Okay. I'm now going to show you on your monitor
19 Government's Exhibit 125.

20 Is that also the same agency number associated with it at
21 the top?

22 A That's correct, 18-011976.

23 Q Does it also show --

24 **THE COURT:** Is this in evidence yet?

25 **MR. PRINCIPE:** Yes. Yes, Your Honor.

1 **BY MR. PRINCIPE**

2 Q And then does it also list the Durham Police Department
3 Item No. 55 on that document?

4 A That's correct.

5 Q And listed there as well?

6 A Yes, sir, they have a barcode sticker that indicates the
7 same information.

8 Q And does Government's Exhibit 125 also contain that same
9 North Carolina State Crime Lab sticker with barcode?

10 A Yes, and with the laboratory Item No. 29 correlating to
11 Durham Police Department's Item No. 55.

12 Q I'm going to open that envelope.

13 Do you recognize that object?

14 A Yes, that would be lab Item No. 29. I recognize it from
15 the barcode sticker that I placed on it, indicating the lab
16 item number as lab Item 29. It also has my initials and the
17 date that I marked that evidence.

18 Q Can you see what's inside of that?

19 A Yes, it contains broken glass, black tint.

20 Q This was also in the envelope. Do you recognize what that
21 object is?

22 A Yes. That is the -- contains the microscope slide that I
23 used to obtain the refractive index measurement of lab Item
24 No. 29.

25 Q I'm taking the objects that were previously removed from

1 Government's Exhibit 102.

2 And your comparison where you went through all three
3 stages of examination was a comparison of the objects from
4 these two jars; correct?

5 A Yes, sir, that's correct.

6 Q I'm also showing you Government's Exhibit 126, which is
7 already in evidence.

8 Does that show the same agency number and item number 56
9 from the Durham Police Department?

10 A Yes, sir, that's correct. That would be Durham Police
11 Department's Item No. 56.

12 Q Does it also have the same barcode from the State Crime
13 Lab with your agency item number?

14 A Yes, it does, indicating laboratory item number 30.

15 Q Showing you Government's Exhibit 27, which is already in
16 evidence.

17 Does that also have the same Durham Police Department
18 agency number and Item No. 57, glass fragments?

19 A Yes, it indicates the same Durham Police Department agency
20 item number, and it indicates Durham agency Item No. 57.

21 Q Does that exhibit, Government's Exhibit 127, also contain
22 the State Crime Lab barcode and item number?

23 A Yes, it does, indicating laboratory Item No. 31.

24 Q And those are also the items that you compared against lab
25 Item No. 28 from the roadway?

1 A That is correct.

2 Q And you just did the physical characteristic comparison
3 between those items; correct?

4 A That's correct.

5 Q Could you exclude either of those items based on the
6 physical characteristics compared to Item 28 from the roadway?

7 A The physical characteristics were consistent for 30 and
8 31. However, laboratory Item No. 31 also contained one
9 blue-tinted, broken glass fragment and one green-tinted, broken
10 glass fragment that were not consistent with the glass
11 fragments from roadway at scene.

12 Q Which item was that again?

13 A So that was laboratory Item 31.

14 Q I'm showing you Government's Exhibit 306. It was the
15 document that you looked at before, which is in evidence.

16 And where was that item collected from?

17 A Laboratory Item 31 was glass fragments from left rear door
18 interior of white Lincoln MKX.

19 Q Collected near the left rear door?

20 A Correct. That laboratory item number contained broken --
21 black-tinted, broken glass fragments and then also contained
22 one blue-tinted, broken glass fragment and one green-tinted,
23 broken glass fragment.

24 **MR. PRINCIPE:** Just one moment, Your Honor.

25 Your Honor, we would like to publish Government's

1 Exhibit 34.

2 **THE COURT:** You may.

3 **BY MR. PRINCIPE**

4 Q I would like to show you on your monitor Government's
5 Exhibit 308.

6 Do you recognize that document?

7 A Yes. I recognize Government's Exhibit 308 as a summary of
8 results of my refractive index examination.

9 Q Okay. And which items does this document pertain to as
10 far as the items that you examined?

11 A Yes, that would be laboratory Item No. 28, the glass
12 fragments from roadway, and the laboratory Item No. 29, glass
13 fragments from under right front seat of white Lincoln MKX, and
14 then also a glass standard, B4, that we run to verify that the
15 instrument's operating properly.

16 **THE COURT:** It's 11:00. Is this a good point where
17 we can take a morning break?

18 **MR. PRINCIPE:** If Your Honor wishes to.

19 **THE COURT:** Ladies and gentlemen, we're going to take
20 a morning break. Although you all may not have been in here
21 the whole time, everybody else has been, and I think a comfort
22 break is in order.

23 If you're taking notes, please put your notes in your
24 envelopes. Leave your envelopes in your chairs. We're going
25 to take our morning break for roughly 20 minutes.

1 And I want to reiterate to you my standard
2 admonitions, and please make sure you understand that when I
3 say you are not to discuss this case at all, that means at any
4 point in time among yourselves or among anybody else. So you
5 are not to discuss any aspect of this case in the jury room,
6 even during breaks or when you go to the bathroom or when you
7 go home, at any point.

8 So there is no research to be done. Everything
9 you're going to learn is going to come to you in this
10 courtroom. You are not to discuss the case at all with each
11 other or with anybody else, period, until I tell you to do
12 that, and that will be only after all the evidence is in,
13 you've heard the arguments of the lawyers, and I've told you
14 what the law is and instructed you. And then I'll let you know
15 when you're free to say anything.

16 So you're not to make any comments about anything
17 that occurs here in the courtroom at all, period. Just put it
18 out of your mind and relax, and then keep an open mind. You
19 have not heard all the evidence. And then we'll bring you back
20 in here in 20 minutes.

21 If you would leave your notepads in your envelopes in
22 your chairs, relax, use the facilities, and be refreshed and
23 ready to go here in 20 minutes.

24 Ms. Engle, if you would escort them across the hall,
25 please.

1 (The jury departed the courtroom.)

2 **THE COURT:** Please be seated, everyone. Give them a
3 moment to get across the hall to the jury room, please.

4 Anybody have any issue they need to raise with me at
5 this time?

6 **MR. GREEN:** No, Your Honor.

7 **MR. BRYSON:** No, Your Honor.

8 **THE COURT:** We'll take our morning break. Please be
9 ready to go at 11:20, if you would.

10 (Proceedings recessed at 11:02 a.m.)

11 (Proceedings called back to order at 11:22 a.m.)

12 (The Defendant was present.)

13 **THE COURT:** All right. Please bring the jurors in.
14 And you can bring the witness in, too, and he can retake the
15 stand.

16 **MR. GREEN:** Yes, Your Honor.

17 (The jury returned to the courtroom.)

18 **THE COURT:** Please be seated, everyone.

19 You may remove your mask.

20 Mr. Principe, you may continue, sir.

21 **MR. PRINCIPE:** Thank you, Your Honor.

22 Your Honor, the Government moves Government's
23 Exhibit 308 into evidence.

24 **THE COURT:** Admitted.

25 **MR. PRINCIPE:** And permission to publish that?

1 **THE COURT:** You may.

2 **MR. PRINCIPE:** So if we can just click to the second
3 page of this document. And then back to the first page.

4 **BY MR. PRINCIPE**

5 Q So what do these charts on this two-page document pertain
6 to as part of your -- the three steps of your examination?

7 A They pertain to the refractive index measurements that
8 were obtained using the glass refractive index measurement
9 system, also known as the GRIM.

10 Q And what physical equipment are you using during that
11 stage?

12 A So the GRIM is comprised of a type of microscope called a
13 phase contrast microscope, enhancing the contrast between
14 different substances. It also has a -- the stage has a
15 temperature regulator so it can heat and cool the -- any
16 material that's on that stage of the phase contrast microscope.

17 Q Is it capable of taking various different kinds of
18 measurements?

19 A Yes. Yes. And that's -- it uses measurements that we
20 obtained using certified standards of known refractive index to
21 obtain a curve of known refractive indices, and then those
22 values are then used to calculate the refractive index of the
23 other glasses that we're measuring for case work.

24 Q Okay. Is that what the information in the yellow box on
25 both pages represents?

1 A The yellow box is information for the standard that we use
2 as a check to ensure that the instrument's operating properly.

3 Q Where do you get those standards from?

4 A They come with the purchase of the instrument, or a
5 company named Locke makes them.

6 Q So that's a scientific manufacturing company that produces
7 those items to go with the equipment?

8 A Produces those standards. That's correct.

9 Q And once that device is calibrated, then you compare that
10 standard against your other items that were submitted?

11 A The B4 standards run first to ensure that the instrument
12 is running properly before additional measurements for case
13 work are conducted.

14 Q Okay. If we go to the red box, that was the lab Item 28?

15 A Yes, sir, that's correct, the glass fragments from roadway
16 at scene.

17 Q And does it have a refractive index for that glass?

18 A Yes, it does. The average refractive index measurement
19 was 1.52393, the range being between 1.52385 and 1.52400.

20 Q And if we go into the green box, Item No. 29?

21 A That was lab Item No. 29, or known glass fragments under
22 right front seat of white Lincoln MKX. The average refractive
23 index measurement for that item was 1.52400 with a range of
24 values between 1.52385 and 1.52415.

25 Q What were you able to conclude about the refractive index

1 of both of those items?

2 A That they were consistent with each other.

3 Q Okay. So, again, that was part of the third step of your
4 examination of those items; correct?

5 A Yes, that's correct.

6 Q I would just like to briefly walk through the three steps
7 with you once again.

8 Step one was the physical characteristics comparison?

9 A Yes. So the physical characteristics looked at the color
10 of the glass. Both items had a black tint that were consistent
11 with each other. And then also I measured the thickness of the
12 glass using a caliper, which is a type of ruler, and found a
13 range of thickness between 4.73 millimeters and 4.76
14 millimeters for lab Item 28. And the thickness for lab Item
15 No. 29 was between 4.72 millimeters and 4.76 millimeters, so
16 those were consistent in thickness.

17 I looked at the glass under a specific wavelength of light
18 in the ultraviolet range, and that's light that's not visible
19 to the naked eye. We do this to see if the glass fluoresces on
20 one side. And when I say "fluoresce," it means that the light
21 that -- that the ultraviolet light that can't be seen as it
22 hits the sample, it generates a light that can be observed.

23 So what does that tell me as a glass examiner? If the
24 glass fluoresces on one side, then it indicates it's a float
25 glass. Float glass is a type of technique of -- is a type of

1 technique in making a flat glass where the glass -- molten
2 glass is carried over a bed of molten tin. So that's why the
3 tinted -- I'm sorry -- float glass has fluorescence on one side
4 is from the residue of the tin.

5 And in this case, I observed that both lab Item 28 and lab
6 Item 29 fluoresced under the short wavelength on one side. So
7 it was float glass.

8 Q Can I ask you a question about that?

9 A Yes, sir.

10 Q When we're talking about automotive glass, is that a type
11 of float glass or not?

12 A Yes, automotive glass is a float glass.

13 Q What other observations did you make about the physical
14 characteristics of those items?

15 A So I also looked at it under the polarized light
16 microscope. I did this to confirm that it was, in fact, glass.
17 Glass is an isotropic compound, meaning that light travels
18 through it the same way in all orientations versus an
19 anisotropic substance, a crystalline material that -- where
20 light can travel through it in different ways when you change
21 its orientation. An example would be -- quartz would be an
22 anisotropic substance. So using the polarized light microscope
23 is a useful way in distinguishing glass from other substances.

24 Q And what did you observe about those two items when you
25 did that step?

1 A Both lab Item 28 and lab Item 29 were isotropic.

2 Q And then let's move on to step two, the elemental
3 characteristics.

4 What are you looking for there and what equipment are you
5 using?

6 A So the x-ray fluorescence spectrometer is a type of
7 instrument that is useful in determining the elemental
8 composition of a substance. It does this by exposing the
9 sample to x-rays, and then the interaction of the x-rays with
10 the sample will generate what are called characteristic x-rays.
11 Those are characteristic of the element that the sample is made
12 up of.

13 Q When you are saying "elements" here, what are you actually
14 talking about?

15 A Elements on the periodic table. So in the case of glass,
16 we are talking about silicon, calcium, iron is typically found
17 as an impurity in glass.

18 Q So the periodic table like in chemistry class?

19 A Yes, sir.

20 Q And what did you observe about lab Item 28 and 29 during
21 that step of your analysis?

22 A They were consistent in elemental composition. They had
23 the same -- we look at ratios of how much calcium and iron are
24 present, and those were consistent with each other. We also
25 look at the ratios in the amount of zirconium and strontium

1 that are present. Those were also consistent with each other.
2 Then I also observed that both lab Item 28 and lab Item 29
3 contained the elements titanium and selenium.

4 Q And then step three was the refractive index, which we
5 already talked about when we showed the chart with the three
6 different colors on it; correct?

7 A That's correct.

8 Q And your conclusion on that?

9 A That they were consistent in refractive index.

10 Q Thank you.

11 **MR. PRINCIPE:** I have no additional questions, Your
12 Honor.

13 **THE COURT:** Any cross?

14 **MR. BRYSON:** No questions, Your Honor.

15 **THE COURT:** All right. You may step down, sir. If
16 you would put your mask back on, please.

17 **MR. PRINCIPE:** May Mr. Gurdziel be released, Your
18 Honor?

19 **MR. BRYSON:** No objection.

20 **THE COURT:** You are free to leave. Thank you.

21 (At 11:36 a.m., witness excused.)

22 **MR. PRINCIPE:** Your Honor, the Government next calls
23 Allyson Anderson.

24 **ALLYSON ANDERSON,** GOVERNMENT'S WITNESS, being first duly
25 affirmed, at 11:36 a.m. testified as follows:

1 **THE COURT:** If you would remove your mask so we can
2 see and hear you and make sure the microphone is directed
3 toward your mouth.

4 Please proceed.

5 DIRECT EXAMINATION

6 **BY MR. PRINCIPE**

7 Q Would you state your name.

8 A Allyson Anderson.

9 Q And who do you work for?

10 A I work for the Durham Police Department.

11 Q How long have you worked for the Durham Police Department?

12 A I started in 2018.

13 Q And what position do you have there?

14 A I'm the technical lead of the firearms and toolmark
15 section.

16 Q And how many years in total do you have in law
17 enforcement?

18 A I started my career in 2010 with the Winston-Salem Police
19 Department.

20 Q And have you always done the same kind of work for law
21 enforcement?

22 A It's all been under the scope of forensics. I was a
23 forensic service technician when I got hired in 2010, and then
24 I got promoted to a firearms examiner, and then I moved to the
25 Durham Police Department as their firearms examiner.

1 Q Okay. And can you tell the jurors a little bit about your
2 training and experience with regard to firearms and toolmark
3 examination?

4 A Yes, of course. I was trained by the ATF, which is the
5 Bureau of Alcohol, Tobacco, Firearms. It is a yearlong
6 training program called the National Firearms Examiner's
7 Training Academy. It is a very rigorous program. They bring
8 in a bunch of examiners in order to get a good feel for
9 different perspectives and different learning styles.

10 After that class, then we come back to our home labs and
11 we are still going through about a six- to eight-month period
12 where you're working one on one with a mentor of some sort,
13 somebody who has some season in the field, until you're
14 actually able to be signed off on case work.

15 Q And how long does that process take in total?

16 A It's pretty much about a two- to three-year process
17 altogether.

18 Q Do you also have degrees from universities?

19 A Yes. I have a Bachelor of Science in forensics science
20 with a concentration in biology and a minor in chemistry from
21 Virginia Commonwealth University in Richmond.

22 Q Have you testified in state and federal court as a
23 firearms and toolmark examiner?

24 A Yes, I have.

25 Q Is there anything else noteworthy with regard to your

1 training and experience with firearms?

2 A I am certified in firearms identification by AFTE, which
3 is the Association of Firearm and Tool Mark Examiners. It's
4 pretty much the standard for any type of certification within
5 our field.

6 Q Have you ever visited a place where firearms or ammunition
7 is manufactured or tested?

8 A Yes. Actually, that's part of our training when I went
9 through the ATF academy. We went to multiple different
10 manufacturers, including Ruger, Smith & Wesson, Sig, and then
11 also I have been to manufacturers like Glock and FN.

12 The reason for going to these places is because, in order
13 to really do our job, you need to know the manufacturing
14 processes. And it is really nice to be able to be in there in
15 the industry in front of people doing the work in order to
16 really be able to apply it to our profession.

17 Q Have you also attended numerous workshops?

18 A So every year we have a conference that is, again, an AFTE
19 conference, which is the Association of Firearm and Tool Mark
20 Examiners, and that is our yearly training that we can take
21 part in in order to kind of hone in our skills, find out the
22 new products that are out, and figure out if there is any new
23 information or new styles that we're doing in our profession.
24 So I do that.

25 I have been to every single one of them since I became a

1 firearms examiner, and I also take any type of training that I
2 can that's online right now or any other auxillary training.

3 Q Did you always know about firearms?

4 A No, I did not, actually. This is something that I
5 definitely, in my professional life, came into. I was not
6 raised around firearms. This was never anything -- I never
7 owned a firearm growing up. So this is something I learned
8 mainly in an academic setting.

9 Q Have you fired firearms before?

10 A Yes.

11 Q What kind?

12 A In my job, obviously, we do fire a lot of firearms. Every
13 firearm that is seized in the Durham Police Department by the
14 Durham Police Department, we do have to fire -- or test-fire is
15 what we call it. Also, I did the same thing in Winston-Salem
16 when I worked for the Winston-Salem police. I fired all the
17 firearms that came through their doors in order to get
18 test-fires.

19 And just during our training, we fired a bunch of
20 firearms, different types, semiautomatic, automatic firearms in
21 order to just get a feel for it and make sure you're familiar
22 with all types of firearms.

23 Q Do you also have to take proficiency tests as part of your
24 work?

25 A So even with the Winston-Salem Police Department and also

1 now with Durham Police Department, I've worked for -- they were
2 both accredited. Forensics has a different -- has a higher
3 standard that you have to go through for accreditation.

4 Per accreditation standards for these two police
5 departments that I have worked for, you are required to take
6 proficiency tests yearly, which essentially are tests that you
7 purchase from an outside source in order for you to be tested
8 on your skills. You submit the results and just make sure that
9 your answer is the same that they want you to get in order to
10 make sure you're doing the work like everybody else in the
11 field is doing it.

12 Q Have you also toured laboratories in multiple different
13 states across the United States?

14 A Yes. So it's been really fortunate that I have been able
15 to go to different places, especially with the conferences. It
16 is always in a different city. So a lot of times, I am able to
17 go to different labs and tour their facility to kind of see
18 what they have, their equipment and their processes that they
19 are using to do our job in the field. It helps build you as an
20 examiner and build your lab that you work for as well.

21 Q So basically you gained additional experience through
22 those tours and visits?

23 A Yes. They are not just, you know, for fun. They are
24 actually a learning experience where you can get a good grasp
25 over, again, what other labs are doing and their equipment that

1 they have.

2 **MR. PRINCIPE:** Your Honor, the Government would
3 tender Allyson Anderson as an expert witness in firearm and
4 toolmark analysis, identification, and comparison.

5 **MR. FOSTER:** No objection.

6 **THE COURT:** She may give her opinions.

7 **BY MR. PRINCIPE**

8 Q Let's talk about how you do your work when a request for
9 an examination is performed. Okay?

10 A Okay.

11 Q So when do you first know that there is something that an
12 investigator needs you to do?

13 A So we are actually given request forms. They are
14 submitted by the case officer or can be submitted by anybody
15 who needs a request done. It is a standard request, and that's
16 where we will get issued that, and that's how we know what type
17 of evidence and what type of analysis or examination that they
18 are wanting for this case.

19 Q And in this particular investigation, were you involved in
20 the -- in doing work related to the investigation of a robbery
21 and homicide on Carlton Crossing Drive in Durham, North
22 Carolina, on April 15, 2018?

23 A Yes, I was involved.

24 Q And did you do two different kinds of examinations?

25 A Yes, I received two different requests at two different

1 times, so that's why I generated two different reports.

2 Q What kind of examination was the first exam?

3 A The first exam, I was requested to look at the bullet.

4 There were two bullets that came from the autopsy, and this was
5 in order that the examiner -- or the officer had asked for me
6 to look at it in order to try to determine what caliber they
7 were. And caliber is essentially the size of the bullet in
8 order to kind of determine what kind of firearm may have fired
9 it.

10 Q Okay. And what was the second examination that you were
11 asked to perform?

12 A The second examination was a lot more comprehensive
13 examination. It came a little bit later after the incident
14 happened, so they were able to kind of see all the different
15 firearms evidence that was with the case and kind of involved
16 in this case. So I looked at all the cartridge cases, all the
17 projectiles and a firearm that was related to this case and
18 compared them all together.

19 Q Let's talk briefly about firearms. So what is a handgun?

20 A So a handgun can be one of two different types of
21 firearms. It could be a semiautomatic pistol or revolver. A
22 handgun is pretty much designed to be fired from the hand as
23 opposed to a rifle or shotgun that's designed to be fired from
24 the shoulder. That's the difference between those.

25 Q And what are some of the main differences or features of a

1 revolver versus a semiautomatic handgun?

2 A So a revolver is kind of that cowboy-style firearm. It
3 has the revolving cylinder, which is how it gets its name. And
4 it has different chambers inside the cylinder that you can load
5 in the cartridges, and it spins. That's -- again, it's fired
6 from the hand, and that's going to be your revolver style.

7 A semiautomatic pistol is going to be one that's actually
8 fed through a magazine. So there is actually going to be a
9 different part of the firearm that is loaded with the
10 cartridges and then inserted into what's called the magazine
11 well, which is the grip portion of the firearm.

12 It is kind like a PEZ dispenser, if you want to think
13 about it, that when you put the cartridges into the magazine,
14 you insert it into the firearm. Then the cartridges are fed
15 into the firearm, just like a PEZ dispenser would be, to put it
16 in kind of easier terms to think of.

17 That type of firearm -- the difference between that and
18 the revolver is that when you shoot a semiautomatic pistol, the
19 cartridge cases, which are the brass or the metal part that
20 comes out of the firearm, it actually gets expended out of an
21 opening in the pistol; while a revolver, when the cartridges
22 are fired, the cartridge cases actually are -- stay inside of
23 that -- that cylinder that I spoke about. So they don't
24 actually spit out any type of cartridge case.

25 Q With the semiautomatic handgun, how quickly is that shell

1 casing ejected from the firearm?

2 A It's pretty much instantaneous. If you saw it in a slow
3 motion, you would see, you know, all the different components
4 move like they should; but when you are actually firing, it's
5 almost instantaneous.

6 Q Which type of handgun, revolver versus semiautomatic
7 handgun, is more likely to leave shell casings at a crime
8 scene?

9 A The one that would be most likely to leave shell casings
10 would be the semiautomatic pistol because it spits out those
11 cartridge cases, like I mentioned.

12 Q Which type of firearm has a higher capacity in terms of
13 being able to have more ammunition ready to fire at a given
14 point in time?

15 A So this could be either/or. It really just depends on the
16 type of firearm. There are revolvers that are smaller calibers
17 that can fit 12, and then there's some pistols that are larger
18 calibers and they can fit five. So it really depends on the
19 size of the cartridge, the caliber, and the amount of capacity.

20 The benefit to a semiautomatic pistol would be that you
21 can kind of change the capacity with the size of magazine. If
22 you had an extended magazine or a longer magazine, you could
23 put more cartridges in there and shoot more from a
24 semiautomatic pistol. So you have a little bit of I, guess,
25 options for that capacity.

1 Q And what would have to happen with regard to a revolver
2 for that to leave shell casings at a crime scene?

3 A So you would actually -- the shooter would have to
4 manually open the cylinder, that spinning cylinder, and eject
5 manually with your hand the cartridge cases.

6 There are types of revolvers that have pins that you can
7 eject pretty quickly, and they kind of all eject at one time.
8 But you would have manually do that, as opposed to a
9 semiautomatic pistol that would shoot out the cartridge case.

10 Q Would a person with a revolver have to eject them onto the
11 ground?

12 A Yes, they would have to eject them onto the ground or into
13 their hand or whatever they would need to do.

14 Q With a semiautomatic firearm, would a person firing that
15 gun be able to catch or recover the shell casing as it came out
16 of the gun when being fired?

17 A I don't want to say it's impossible, but it would be
18 really to difficult to be able to do at the same time. It
19 would be very difficult.

20 Q I'm going to show you now Government's Exhibit 297. This
21 is the first page of a series of slides.

22 Are you familiar with this document?

23 A Yes, I am.

24 Q And are these slides that you have used in the past to
25 discuss firearm and toolmark identification?

1 A Yes.

2 MR. PRINCIPE: The Government would move Government's
3 Exhibit 297 into evidence.

4 THE COURT: Admitted.

5 MR. PRINCIPE: And permission to publish that?

6 THE COURT: You may.

7 BY MR. PRINCIPE

8 Q So what is this first slide that we're looking at?

9 A So as I mentioned earlier, I am a firearm and toolmark
10 examiner. What that means is that we actually look at firearms
11 and tools. I think it is important for that to be understood
12 because a firearm in our field is actually considered a tool.
13 And this is why. It's because a tool is any harder object that
14 can impart any type of, I guess -- well, if it comes in
15 contact, it can impart marks or anything onto a softer object.

16 So you got to think, you know, if we want to go to, like,
17 a hammer, if you hit a hammer to wood hard enough, it can make
18 an indentation. If the firearm -- it's all made out of metal for
19 the most part. Then that can make these marks onto a softer
20 metal, which would be the cartridge case or the bullet.

21 So we kind of consider them as roughly the same thing.
22 They are all tools. And that's why we're able to link them and
23 kind of group them into the same profession. So this just
24 gives you the definition of a tool, which is any harder of two
25 objects that comes into forceful contact with each other

1 resulting in the softer object being marked.

2 Q Let's move to the next slide. And what is this slide?

3 A So this is the result of the tool coming in contact with
4 that softer object. It would be an actual toolmark, and so,
5 again, it's some type of mark. It can be different types of
6 marks. There's two different that are labeled on here. It's
7 striated and impressed. So there are different types of marks
8 that can be made. But it is essentially the softer object that
9 the tool is making a mark on.

10 Q Let's look at Slide No. 3.

11 What does this slide show?

12 A So this is kind of looking at what exactly an impressed
13 mark is. And we deal with both of these in our -- in the
14 firearm world. And essentially, like, a good example of an
15 impressed mark, as you can see on this slide, is a firing pin
16 impression.

17 So the firing pin is the part of the firearm that will
18 actually hit the primer that's on the cartridge, and that
19 primer will then ignite the powder that's inside. So that
20 forceful firing pin impression is what we look at, and that's
21 that little dimple that you see that's in that circle. That's
22 going to be the primer with the firing pin impression. So it's
23 actually in the name, firing pin impression.

24 The other mark is going to be a toolmark that you can kind
25 of see. It's like a rounded arc. That's going to be from an

1 actual mechanical tool.

2 Q Let's look at Slide No. 4.

3 What is this slide showing?

4 A So these are striated toolmarks. You can see this is when
5 motion is, like, applied to the mark. So with impressed marks,
6 you kind of have just the force of something coming on down on
7 it, where striated marks have movement involved in that. So
8 these are showing the striations that we can look at during our
9 comparison. The one to the right is a bullet, and you can see
10 that's your land and groove impressions that we look at.

11 Q Let's look at Slide No. 5.

12 And what is this slide about?

13 A So in order for us to really be able to compare and look
14 at two different items, we look at different types of
15 characteristics. We have class characteristics and individual
16 characteristics. These are class characteristics. They are
17 features that are determined by the manufacturer in order to
18 make it -- kind of set it apart from something else.

19 And so they are typically measurable, but they are design
20 features. So, for example, it could be caliber, because if you
21 have a 9mm firearm and a .40 caliber firearm, the manufacturer
22 has decided to make that firearm a 9mm and this firearm to be a
23 .40 caliber. That's a design feature from the manufacturer.
24 It could be the number of lands and grooves that are in the
25 barrel to have the rifling. So there can be a lot of different

1 class characteristics.

2 Q Okay. Let's look at Slide No. 6.

3 And what does Slide No. 6 show?

4 A So, again, this is kind of going into the example. As I
5 mentioned, it could be the number of lands and grooves. So as
6 you can see in the picture, you have land and then groove and
7 then land and then groove, and it is pretty much the negative
8 impression on the bullet that's in the rifling of the barrel.
9 So the barrel is what's made by the manufacturer and determined
10 by the manufacturer, but that number is going to correspond
11 with the fired bullet.

12 Essentially you won't be able to have a barrel that has
13 five lands and grooves make a bullet that has six lands and
14 grooves. It is just not going to happen. They are going to
15 mimic each other and be the same.

16 Q And just so we're clear, what is the image on the
17 left-hand side showing?

18 A So the left-hand side is going to be kind of a cutout or a
19 cross-section of the inside of a barrel of a firearm.

20 Q What is the barrel of a firearm?

21 A So the barrel of a firearm is actually going to be the
22 part that the bullet is expelled out of. So it's going to be
23 the longer -- the longer cylindrical part of the firearm.

24 The firearm in general, in order to have accuracy, the
25 manufacturers will put rifling inside the barrel. What that

1 does is it puts a spin on the bullet. So think of it kind of
2 like a football. And if you throw a football, you want it to
3 have spin. And if you're a good quarterback, you're actually
4 going to be able to place that football exactly where you want
5 it and as far as you want it, and that's because you've been
6 able to hone in your spin, which makes you more accurate.

7 So it is kind of the same concept for a bullet that's
8 coming out of a barrel. These grooves are going to be cut
9 inside or formed inside the barrel to give the bullet some spin
10 so it has accuracy for its flight path in order to essentially
11 hit the target that it's aiming for.

12 Q So the image on the right then is the kind of marks that
13 can be left on a bullet after it travels down a rifle barrel?

14 A Correct.

15 Q Let's look at Slide No. 7.

16 What is this showing?

17 A This is just kind of going back to the manual tools that
18 we were talking about. This is the screwdriver and a piece of
19 lead sheeting. And the screwdriver is the harder tool making
20 the impressions or the striations on the softer lead, and you
21 can see the marks as it travels.

22 Q Let's look at Slide No. 8.

23 What is this slide talking about?

24 A So individual characteristics are the second type of
25 characteristic that I mentioned. They are -- kind of be more

1 your more unique characteristics. During your manufacturing
2 process -- and this is why it's important to visit these
3 manufacturers during our training. You will have different
4 types of ways that the firearms manufacturers will make the
5 firearms. And with this, you can have drilling, or you can
6 have polishing, or you can different things that the
7 manufacturer is going to do in order to actually form and
8 create that firearm.

9 So with that, the metal is formed in a way that is unique.
10 That process is kind of the basis for what we use for when a
11 firearm makes marks on a cartridge case or a bullet is that
12 these marks during the manufacturing process are unique.

13 And so that's when they are then imparted onto the firearm
14 components. They themselves are also unique, which are what
15 these individual characteristics are.

16 Q Let's look at Slide No. 9.

17 Is that some of the things you've just spoken about, or is
18 this something different?

19 A Yeah, these are pretty much -- the only other things that
20 they add here is that there can be individual characteristics
21 that are through abuse and use. That mainly talks more for the
22 mechanical tools like a screwdriver or a hammer, but you can
23 also use and abuse firearms to then kind of alter the marks in
24 the future.

25 Q Does that mean that a firearm that has been used and

1 abused could be different than a brand-new firearm that's the
2 same make and manufacture and model?

3 A The difference is that you have -- most of the components
4 that we use for firearms examination are housed inside of the
5 actual firearm, so the likelihood is extremely low, but you're
6 still going to have the actual marks that are made by the
7 manufacturer that are there. And you won't see a huge amount
8 of difference unless somebody has just completely destroyed
9 something.

10 Q Let's look at Slide No. 10.

11 What is this depicting?

12 A So this is just another example of some individual
13 characteristics. This is going to be a knife and then the
14 sharpening process of a knife. You can actually have -- it
15 will make obviously very unique and individual markings and
16 characteristics on that blade.

17 Q Let's look at Slide No. 11.

18 What is this showing?

19 A So this shows the actual use and abuse. And as you can
20 tell, they are both mechanical tools that are -- that show the
21 use and abuse on it, and that's where you typically see that
22 happening. And that's going to be those pictures right there.

23 Q Let's look at Slide No. 12.

24 What does this show?

25 A So as I mentioned earlier, if you have a bullet that is --

1 has five lands and grooves, it is not going to -- a barrel, I'm
2 sorry -- a barrel that has five lands and grooves, it is not
3 going to produce a bullet that has six lands and grooves.

4 So this is a really good diagram, or picture, that shows
5 that you can have differences in class that are pretty much not
6 going to be from the same firearm because they are so
7 different. It is a difference of class characteristics.

8 So there's two different differences -- main differences
9 that you can see in these photos. First is going to be your
10 direction of twist. You see the yellow arrow that points to
11 the direction. So we actually look at the bullets and can tell
12 the direction of twist, which is whichever direction that the
13 spin is going to be placed on that bullet.

14 So a right bullet can't come out of a left twist gun, and
15 a left twist bullet can't come out of a right twist gun. Also,
16 the diameters of these bullets are different, which would mean
17 the caliber is going to be different. So the size of the
18 bullet, which is kind of synonymous with caliber, will also be
19 different.

20 Q Let's look at the next slide, Slide 13.

21 What does this show?

22 A So this is the type of equipment that we use in our
23 examination. This is a comparison microscope. The microscope
24 is essentially two microscopes that are independent of each
25 other, but they are linked together by what's called an optical

1 bridge so that when you look at it, you can compare two items
2 side by side for comparison.

3 And the next picture shows that side-by-side comparison.

4 You can see the line going through the middle, which is our
5 line of demarcation that has the two pictures or the two images
6 as you are looking at them side by side.

7 Q And what does this next slide show?

8 A So these are our range of conclusions. We can have three
9 different conclusions that we can make as firearms examiners.
10 They can be an identification, an inconclusive, or an
11 elimination.

12 Q Let's look at the next slide.

13 So what is an identification?

14 A An identification is when the examiner looks at two items
15 and they have commonalities in their class characteristics.
16 So, again, like I mentioned, you've got a five-right barrel
17 making a five-right bullet, for example. So you have -- the
18 class characteristics are in agreement, but then you also have
19 those individual characteristics. When comparing them on a
20 comparison microscope, you're able to see those individual
21 characteristics also having good pattern correspondence in
22 order to show that the reproducibility of the marks is likely
23 that these were fired from the same firearm.

24 Q Next slide.

25 What does this slide show?

1 A So this is showing more of those comparison photos. You
2 can see the side-by-side comparison, and you can see the
3 striations that the examiner has lined up in this photo in
4 order to show the striations, as they move across the page and
5 across the photo, how they are corresponding.

6 Q Look at the next slide.

7 What is an inconclusive result?

8 A So inconclusive is also a result that we get a lot in our
9 field, and the reason for that is that sometimes, especially
10 with bullets, these bullets go through a lot of different
11 substrates after they have been fired from the barrel. And so
12 the different substrates can damage the bullets, can do -- you
13 know, can break the bullets apart where you may not even have
14 the full bullet, or then they can go through another harder
15 surface to make marks onto them from another area. So if it
16 goes through a wall, that could then make marks on the bullet
17 that are not from the actual firearm barrel.

18 So the thing with inconclusive is we're looking at them
19 and they do have similar class characteristics; so, again, they
20 may have the same amount of lands and grooves or they may have
21 the same direction of twist, and it may be the same caliber,
22 but the actual individual characteristics are either not
23 reproducing well and there is not enough for a comparison, or
24 there's not enough positive agreement when you look at it for
25 the comparison to be able to go to an identification. So

1 you're kind of just a little unsure on if this came from that
2 firearm or not.

3 Q Let's look at the next slide.

4 What does this show?

5 A This shows an inconclusive in a single photograph. You
6 can kind of see those brighter lines at the bottom how those
7 look kind of nice, but you really don't have a lot of good
8 detail anywhere else. It's very porous and not a lot of those
9 nice striations that you saw in the other photographs.

10 So this is just something that happens that when you just
11 don't have enough good detail on the evidence, as an examiner,
12 you don't want to make a poor call, so you will go with an
13 inconclusive.

14 Q So you make that determination as the examiner?

15 A Yes. Due to our training and experience, we're able to
16 make that correlation and that determination on the conclusion.

17 Q Is your work ever peer-reviewed or reviewed by somebody
18 else?

19 A Yes, every single bit of our work is peer-reviewed.

20 Q And who does that?

21 A Another qualified examiner.

22 Q And in your work in this case, did somebody do that for
23 your work in this case?

24 A Yes.

25 Q Let's look at the next slide.

1 And what is a conclusion of elimination?

2 A So we've touched on this multiple times. It is when
3 you're either looking at class characteristics that are not the
4 same -- so I am going to go back to my same example, the
5 five-twist barrel cannot make a six-twist bullet. That would
6 be an easy elimination just because, again, it can't happen.

7 Now, you can have eliminations that are just a
8 disagreement of individual characteristics, and that's mainly
9 when you have a good reproducing sample. So if you have --
10 you're looking at other, let's just say bullets, and the
11 bullets -- you have a few, three, and you can tell that these
12 three bullets came from the same firearm because they have
13 reproducing marks on all the three bullets, but then you have
14 another bullet that is introduced into it and it is not
15 producing those marks the same, you can actually still say that
16 that firearm -- that bullet was not fired from the same group
17 as this firearm -- or these bullets because the marks are not
18 reproducing correctly.

19 Q Let's look at the next slide.

20 So what does this photo show?

21 A So this is a photograph of an elimination. So as you can
22 tell, it is kind of -- a circle is on one side, which is that
23 firing pin impression, and then the other side is more of an
24 oval firing pin impression with a box around it. So it is kind
25 of that same, you know, I guess saying you can't make a round

1 hole with a square peg. It is the same concept here. Your
2 shapes have to correspond.

3 So that would be a good elimination of class
4 characteristics that the shapes are not the same.

5 Q Let's look at the next slide.

6 What is this showing?

7 A This is another -- showing another elimination. This is a
8 mechanical tool. So you have a crowbar where it has two prongs
9 and then the toolmark, which is a linear consistent mark. And,
10 again, you just wouldn't be able to make that same mark -- with
11 the two-prong crowbar, make that long linear mark.

12 Q So within your field of firearm and toolmark examination,
13 you typically will reach a conclusion of identification,
14 inconclusive, or elimination; is that right?

15 A That is correct.

16 Q When you reach those conclusions, are those just your
17 opinions based on your training and experience?

18 A Yes, that is correct.

19 Q Let's look at the last slide.

20 What does this slide show?

21 A So this is the basis of firearm and toolmark
22 examination -- or identification. There are some foundations
23 that we kind go off of in our field, the first one being
24 standard of identification.

25 In order to go through your training, you will look at a

1 bunch of items that you know were fired from the same firearm.
2 That gives you that threshold of what two items that should
3 look the same or look similar should look like. It starts to
4 build your threshold. So these were fired from the same
5 firearm.

6 Well, then you start to look at things that you know were
7 not fired from the same firearm. Potentially, they could be
8 the same make and model of the firearm, but they are not the
9 same firearm. And by looking at things that you know were not
10 fired from the same firearm and things that you know were fired
11 from the same firearm, you start to build a good threshold as
12 an examiner.

13 And by looking at the surface contours and the peaks and
14 valleys of all these marks that are made, whether they are
15 striated or impressed, that's how you're able to build your
16 ability to say whether or not something is an identification or
17 an elimination.

18 Q Okay. Let's pause for just a second. I want to shift
19 gears and discuss the first examination that you did, the
20 caliber examination.

21 But before we do that, let me show you Government's
22 Exhibit 9 -- I'm sorry, 298.

23 What does this exhibit show?

24 A So this is another good exhibit that shows a difference of
25 caliber. And kind of how I mentioned earlier, caliber kind of

1 is synonymous with size. So you can tell the .45 ACP, which
2 means automatic Colt pistol, is larger, then as it goes down
3 the line to the .380 ACP.

4 So, again, different firearm manufacturers are going to
5 determine these calibers for the firearm that they are
6 producing and the firearm that they are manufacturing. So the
7 different sizes of the cartridge will obviously have to kind of
8 correspond with the actual firearm. So as you can tell, there
9 is different types.

10 Q Can I stop you for just a second?

11 **MR. PRINCIPE:** Your Honor, may I move Government's
12 Exhibit 298 into evidence and publish that?

13 **THE COURT:** It's admitted. You may.

14 **BY MR. PRINCIPE**

15 Q Okay. Can you continue?

16 A Yes. So I was just going to say, as you can tell on the
17 bottom, there's different verbiage or different numbers that
18 will kind of correspond with the different sizes of calibers.
19 And that's just -- this is just a snapshot of all the different
20 calibers. There are tons of calibers that are within the
21 world, and this is just a small snippet of a few.

22 Q What are some of the most common calibers for handguns?

23 A 9mm I would say would be the most common, followed by .40
24 Smith & Wesson, and .45 are your main three calibers.

25 Q And what is a caliber family?

1 A So when we look at caliber, again, we're looking at size.
2 So when you measure the diameter of the bullet, which is what
3 you're actually measuring when you deal with caliber because
4 the bullet is what actually travels down the barrel. So that's
5 what you need to care about, what size the bullet is. That
6 diameter is -- can be used in multiple different types of
7 cartridges.

8 So with here that we're looking at, technically the last
9 two, a 9mm and a .380, they are the same diameter. The length
10 is a little bit different, and the physical characteristics and
11 the features that are within the design of the cartridges are
12 different, but the diameter is roughly the same. So when we
13 talk about caliber families, they are going to be families in
14 which multiple calibers can fall within.

15 Q Let's -- I'm going to show you now Government's
16 Exhibit 299.

17 Do you recognize what that document is?

18 A Yes, I do.

19 Q And what is that document?

20 A That is my first report that I made for this case.

21 **MR. PRINCIPE:** And if we can zoom in on the top half
22 of the page.

23 **BY MR. PRINCIPE**

24 Q How do you know that this report pertains to this
25 investigation?

1 A Because the case number is the number that is assigned to
2 this investigation.

3 Q And what items were submitted as part of that examination?

4 A I was given two different items. It was Item 110 and Item
5 111.

6 Q And what type of examination did you perform at that time?

7 A This was the bullet caliber determination where I tried to
8 figure out what caliber that this bullet was and any other
9 physical features that I could look at to find out any other
10 information for the investigators.

11 **MR. PRINCIPE:** The Government would move Government's
12 Exhibit 299 into evidence.

13 **THE COURT:** Admitted.

14 **MR. PRINCIPE:** Permission to publish that?

15 **THE COURT:** You may.

16 **MR. PRINCIPE:** If we could just scroll through the
17 pages briefly. Let's go to page 3.

18 **BY MR. PRINCIPE**

19 Q What is that showing?

20 A Page 3 shows -- anytime I do an examination, before I
21 start actually comparing anything, I want to look at each item
22 of evidence independently. And this is important to me because
23 I think that looking at each item independently gives you a
24 more comprehensive feel of each item of evidence before you
25 start getting into the actual comparison of different items.

1 So here I will actually put down some design features that
2 I see, the make -- or not the make. I'm sorry -- the material
3 of which -- that this item is made out of. So for bullets,
4 they can be made out of many different types of materials.
5 They can be all lead; they can have a lead core but have a
6 copper jacket; they can have a nickel-plated jacket; they can
7 actually be formed and drilled out of a single piece of metal;
8 and they also can be formed by a compressed metal.

9 So there is a lot of options out there. So you want to
10 make sure you're looking at the material that this item is made
11 out of.

12 I also took measurements for the diameter. I weighed the
13 item. And then I drew a little diagram because I think it's
14 important to remember for instances like this, where I do come
15 to court, what the item looked like when I first received it.
16 And a picture can show that for sure. But this is in my notes
17 where I don't have to embed a picture and I can just draw what
18 I saw and kind of annotate it.

19 Q Okay. And what item number does this page correspond to?

20 A This is 110.

21 **MR. PRINCIPE:** If you will move to the next page.

22 **BY MR. PRINCIPE**

23 Q What item number does this page correspond to?

24 A This is 111.

25 Q And you also did a diagram for that item?

1 A Absolutely. I did the whole -- all the information at the
2 top, and then I drew the diagram for this one.

3 Q And those are the two items that you looked at for the
4 caliber determination; correct?

5 A Yes, that is correct.

6 Q I'm showing you what's already in evidence, Government's
7 Exhibit 262. Just wait a second.

8 So Government's Exhibit 262, and do you recognize the
9 writing on that -- well, not do you recognize the writing, but
10 is that number associated with your investigation and the item
11 you looked at?

12 A Yes, that is correct.

13 Q I will zoom out a little bit. Does it also have a Durham
14 Police Department barcode on it?

15 A Yes, it does.

16 Q And it has information and writing on the back. Do you
17 recognize that?

18 A Yes. That's my writing.

19 Q And so you made these initials here?

20 A Yes, I did.

21 Q AA for Allyson Anderson?

22 A That's correct.

23 Q And why did you write on there where piece of tape is?

24 A Because that just shows that I resealed package and that
25 was the date that I resealed the package back in order to

1 submit it back to property.

2 Q So you did that on August 12, 2019?

3 A Yes.

4 Q Does that correspond to the time that you did this
5 examination?

6 A It does.

7 Q I'm going to open up Government's Exhibit 262.

8 What is this that just came out of that larger envelope?

9 A That's what we call the inner package. It is holding some
10 type of evidence, but it is the inner packaging inside of the
11 larger package.

12 Q It's got a barcode and label on there; is that correct?

13 A That is correct.

14 Q And other information on the back of it?

15 A Yes, that's correct.

16 Q Are those your initials there as well?

17 A Yes, they are.

18 Q I am going to open that envelope.

19 Is there a piece of paper in there?

20 A Yes.

21 Q And an object?

22 A Yes, that's the lead core.

23 Q I'm showing you what's already in evidence, Government's
24 Exhibit 263.

25 Is that the same file number and information and item

1 number 111 pertaining to this case?

2 A Yes, it is.

3 Q Is Item 111 the other object that you examined as part of
4 this caliber determination?

5 A Yes, it was.

6 Q I am going to open up Government's Exhibit 263. There is
7 another envelope inside of that larger envelope; correct?

8 A Correct.

9 Q Are those your initials on the inner envelope?

10 A Yes, they are.

11 Q I am going to open up that smaller envelope.

12 There is another card that was inside?

13 A Yes.

14 Q And a metal object?

15 A Yes, that's the bullet jacket.

16 Q Let's go back to Government's Exhibit 299.

17 So what results or conclusions were you able to reach
18 during this examination?

19 A So due to the measuring of the diameter of the jacket
20 piece, that's -- was the item that had that shape still intact,
21 the core was essentially not useful to me just because it was
22 so damaged.

23 The jacket -- I was able to get the diameter of that
24 jacket piece, both the jacket core -- I'm sorry -- the jacket
25 in general, and then weigh them both together. So with the

1 weight and the diameter and then also looking at the rifling
2 features that I talked about, those lands and grooves on the
3 side of the jacket, I was able to determine that we were
4 looking at either a .40 caliber Smith & Wesson bullet or a 10mm
5 bullet. And then also the rifling was polygonal, and there was
6 a list of firearms that may have fired that bullet.

7 Q And what were the list of firearms that could have fired
8 that bullet?

9 A So the list was it could have been a Glock, an H&K, IMI,
10 Kahr, Vector, and then possible others that are unknown to
11 myself.

12 Q And why might they be unknown to you?

13 A So what we actually do for this is we enter the design
14 features and the information from our analysis into a database.
15 The database that I used for this case is actually made by the
16 FBI and maintained by the FBI. So they try to compile as many
17 firearms that they know of into this database and put the
18 information in there.

19 There is always a chance that there is something out there
20 they did not have in the database. So when we enter them into
21 the database, it kind of compiles a list; but we always like to
22 say that there could be other ones that we don't know of just
23 because they may not be in the database.

24 Q And with regard to Item 110, paragraph 3, it seems to say
25 it was unsuitable for comparison. And why was that?

1 A That was that lead core that I was talking about, and just
2 due to the damage. So it appeared to me like the jacket and
3 the core -- it appeared to be a single bullet to begin with and
4 that they separated either inside the body or outside, but most
5 likely inside the body that they separated from each other.
6 And that happens pretty frequently because the jackets are not
7 typically bonded to the cores. So there is that possibility
8 for separation.

9 So because of that, that lead core which was a very soft
10 metal was damaged, and there was just no rifling information
11 and nothing that I could use for caliber determination other
12 than utilizing it as part of the weight.

13 Q Okay. I'm going to show you page 5 of your report.

14 And what does this page show?

15 **MR. PRINCIPE:** If we can zoom in on the top half.

16 **THE WITNESS:** That is that GRC database that I was
17 talking about. GRC stands for general rifling characteristics.
18 So, again, those are those design features that we find on the
19 bullets that we can enter into this database in order for them
20 to generate some possible make and models of firearms. This
21 was the front cover page showing the information that I entered
22 into the system to elicit the results.

23 **BY MR. PRINCIPE**

24 Q So what were some of the data points you entered?

25 A I entered that the caliber family was .40. So that --

1 actually there is caliber family. If I wanted to be specific
2 about the caliber types, I would go to cartridges. And then I
3 also entered in that it was polygonal rifling and that it was a
4 right twist with six lands and grooves.

5 Q And then did the database return a number of hits?

6 A Yes. It returned, I want to say, nine results.

7 Q And then if we go to the next page, what does this page
8 show?

9 A That's the result page.

10 Q Can you go through the information on the left-hand side?

11 A So on the left-hand side, you can see the first result
12 shows a 10mm and then the following results are all .40 Smith &
13 Wesson. This is because, like I said, I put in .40 caliber
14 family, which we talked about could encompass multiple
15 different cartridges -- or multiple different caliber types.
16 So that made it so I was including all different possibilities
17 that it could be and I wasn't limiting my search.

18 And then it shows -- as you follow through the result
19 list, it shows that these were all right twists with six lands
20 and grooves. And all the measurements for this one is zero to
21 zero, and that's because of the polygonal rifling that it is.

22 **THE COURT:** Is that a good place to stop? It's
23 12:30.

24 **MR. PRINCIPE:** Sure, Your Honor, we can stop there.

25 **THE COURT:** All right. Ladies and gentlemen, it is

1 time for lunch, so we're going to stop right here. So please
2 put your notes in your envelopes. Leave your envelopes in your
3 chairs. They will be safeguarded in your absence and returned
4 to you when you're back.

5 Now, I'm going to dismiss you for lunch. Remember
6 all my admonitions, especially my admonition not to discuss any
7 aspect of this case among yourselves or with anyone else.
8 Completely put it out of your mind. All right. And I'll ask
9 that you be in Courtroom 3 across the hall, which is your jury
10 room, at 1:45. So it will give you an hour and maybe 13
11 minutes. Hopefully that's enough time.

12 As far as I know, we're still on track, and I will
13 give you a better report this afternoon; but it looks like
14 we're still on track, as I indicated yesterday. All right. So
15 please enjoy your lunch.

16 Everyone else remain in the courtroom while they're
17 being excused, please.

18 (The jury departed the courtroom at 12:30 p.m.)

19 **THE COURT:** Give them a moment until I know they are
20 out of the hallway.

21 All the jurors are out of the courtroom. You may
22 step down off the witness stand, if you wish, ma'am.

23 So any report you need to make to me on any issue?

24 **MR. GREEN:** Your Honor, I think the parties have
25 largely resolved the question of the text messages and context.

1 I'm trying to prepare a document to make sure we're in
2 agreement on exactly the items that we agreed to.

3 And then consistent with that conversation, the
4 Government will not introduce evidence of flight, but we do
5 think we have an agreed-upon number of text messages as it
6 relates to specifically to Miss Poole and Mr. Wiley, the
7 subject of the motion in limine. I will present that document
8 before we get started after lunch just so the Court has it and
9 can kind of understand where we are. We think it's consistent.

10 **THE COURT:** All right. You said "largely." Is
11 that --

12 **MR. GREEN:** Yeah, I think we're there, but until
13 the -- it's kind of like the -- until the check is signed, it's
14 not signed.

15 **THE COURT:** I understand.

16 **MR. GREEN:** So I think we're there in terms of
17 agreement.

18 **THE COURT:** Okay. All right. How are we doing on
19 progress?

20 **MR. GREEN:** Doing fine, Your Honor. I think we're
21 still on track. Just so you know in terms of forecast, each
22 witness has its own pace. Ms. Anderson will continue with a
23 pretty detailed analysis as we continue. Then the next
24 witnesses on the list will go much more rapidly. They are kind
25 of short witnesses. As we get past David Cramer, the next

1 group of witnesses will be relatively short. And then when we
2 get to Agent Jocys, again they will slow down. So we may not
3 get to Justin Heinrich today at the current pace, but he was
4 actually pulled over from Friday, as we had previously planned.
5 So I think we're still on pace.

6 **THE COURT:** All right. If Mr. Cox testifies, you've
7 alerted his counsel, I take it?

8 **MR. GREEN:** I have. And they are going to come by
9 today. I don't anticipate that we are on pace to have him
10 testify today, but we'll be ready -- he's here, and we'll be
11 ready in case we do have that opportunity to start.

12 **THE COURT:** Since we're talking about him, he's in
13 custody; correct?

14 **MR. GREEN:** He is.

15 **THE COURT:** My presumption is they will bring him in
16 restrained?

17 **MR. GREEN:** Yep.

18 **THE COURT:** All right. Anybody want to be heard on
19 that?

20 **MR. GREEN:** No, I do not.

21 **MR. BRYSON:** We do not.

22 **THE COURT:** All right. Anything else?

23 **MR. GREEN:** No, Your Honor.

24 **THE COURT:** How about from the Defendant?

25 **MR. BRYSON:** You wanted to talk -- the Court

1 indicated the other day that you might at some point want to
2 know about whether or not we intend to call witnesses. Do
3 you --

4 **THE COURT:** I'm only interested in the schedule. And
5 I certainly don't want to ask anything that might affect your
6 strategy or how you're going to proceed. But I need to have
7 some planning to know whether we'll be finishing Friday or
8 whether we'll be -- where we'll be. It would be helpful to
9 know that.

10 **MR. BRYSON:** Your Honor, I would say this. The
11 decision for us as to whether or not we will be calling any
12 witnesses will depend, in large part, on how Mr. Cox testifies.
13 If he acknowledges what we ask him, there is a strong
14 likelihood that we will not be calling any witnesses. If it
15 doesn't go that way, there is a likelihood that we would call
16 one, possibly two, and on an extremely remote basis, three
17 witnesses; and if we did that, they would all be very short.
18 It would be surprising to me, even if we had to call three
19 witnesses, that it would take longer than an hour.

20 **THE COURT:** How long do you think you'll need for
21 closings? I'm going to assume -- you said you thought the
22 Government might rest by lunchtime. Is it possible before
23 lunch, or lunch?

24 **MR. GREEN:** I think lunch is probably a fair --

25 **THE COURT:** So there is the possibility that if the

1 Defendant did not present any evidence, at 2:00, we'd be -- or
2 1:45, we'd be ready to proceed. So I will get you proposed
3 jury instructions this afternoon then for you to at least have,
4 not to prejudge any motions. I just want to have them out
5 there since you've already submitted them. They are largely
6 what you've submitted. I made just a few tweaks. And we can
7 talk about the objections the Defendant had, and I would be
8 glad to hear you on that further.

9 But I don't know whether the -- presumptively, we'll
10 be in position maybe by after lunch to have closings. I'm just
11 curious as to what you think that's going to require timewise.

12 **MR. BRYSON:** I try never to argue more than an hour.
13 And it's still a work in progress, but I would say 45 minutes
14 maybe.

15 **THE COURT:** Okay.

16 **MR. GREEN:** I think in toto, both the opening and the
17 closing close, rebuttal, again, I think 45 minutes would
18 probably be much further than I would actually --

19 **THE COURT:** So there is at least a possibility the
20 case could be instructed on Friday, it sounds like?

21 **MR. GREEN:** Yes.

22 **THE COURT:** Okay. We'll see where we are with the
23 time. The last comment I wanted to make, just a heads-up, is
24 you had some wording on the instruction in the jury
25 instructions on reasonable doubt, and there was a sentence or

1 two that I have not normally seen. I don't know where that
2 originated.

3 The Fourth Circuit has made it very clear that I am
4 not to define reasonable doubt. Contrary to other circuits
5 where apparently you can, it is reversible error to define
6 reasonable doubt. So I would simply ask you to look at that
7 language. If somebody knows where it came from, that would be
8 helpful. I don't have my draft right in front me, but there
9 was an extra sentence or so that I had not normally seen. So
10 does anybody know the origin of that?

11 **MR. PRINCIPE:** We could go back and figure that out.
12 I do know that some of the instructions defense counsel gave to
13 us might have been, what, Fifth Circuit or Eleventh?

14 **MR. FOSTER:** That's right. A lot of the ones we
15 submitted were Fifth Circuit. So that's a likely source of the
16 other sentence.

17 **THE COURT:** Well, I may have to tweak that then. And
18 I probably will tell you I am going to tweak that. My normal
19 instruction reads something like: The burden is on the
20 Government to prove beyond a reasonable doubt all of the
21 elements of the offense. The Government does not have to prove
22 beyond all doubt, only reasonable doubt. A reasonable doubt
23 may arise from the evidence or the lack of evidence. And I
24 think that's it.

25 **MR. GREEN:** Yes, Your Honor.

1 **THE COURT:** Something like that. That's typically
2 what's instructed here. If you have any support for more than
3 that, I would be glad to look at it. But I just advise you
4 about the standard in our circuit, and I have some concern
5 about the language that was submitted.

6 Okay. And the caution that goes with that is be
7 careful what you argue in closing in terms of defining
8 reasonable doubt. You can certainly argue the lack of evidence
9 and you can argue reasonable doubt, but just be careful. I had
10 one closing where a lawyer tried to put a percentage on it, for
11 example. So I'm not going to prejudge any argument. I'm just
12 saying keep an eye on it. If you have any questions about it, let
13 me know.

14 All right. Enjoy your lunch. We'll see you back
15 then at 1:45.

16 (Proceedings recessed at 12:39 p.m.)

17 (Proceedings called back to order at 1:47 p.m.)

18 (The Defendant was present.)

19 **THE COURT:** Okay. I am going to bring the jury in,
20 unless you have any issues.

21 **MR. GREEN:** No, Your Honor.

22 **THE COURT:** If you will get the witness and please
23 bring in the jury.

24 (The jury returned to the courtroom.)

25 **THE COURT:** Welcome back, ladies and gentlemen. I

1 will give you a moment, if you're taking notes, to get your
2 notepads out.

3 Mr. Principe, you may continue with your examination.

4 I remind you you are still under oath.

5 **MR. PRINCIPE:** Thank you, Your Honor.

6 If we can pull back up the exhibit we were looking
7 at, Government's Exhibit 299. And I think we were looking at
8 the last page.

9 **BY MR. PRINCIPE**

10 Q And what is the information pertaining to that list that
11 you got from the database? On the left-hand side, it lists the
12 possible cartridge calibers. What is the information about the
13 manufacturer and model on the right?

14 A So, yes, on the right, it says the list of manufacturers
15 that have produced firearms that have these same
16 characteristics.

17 Q So is a Glock Model 20 a model of Glock firearm?

18 A Yes, it is.

19 Q Is a Glock 27 a model of Glock firearm?

20 A Yes, it is.

21 Q Okay. Let me show you Government's Exhibit 300.

22 What is that exhibit?

23 A This picture is showing a .40 caliber Smith & Wesson and a
24 10mm cartridge side by side.

25 Q Okay. And previously you said, as a result of your first

1 examination, you determined that the -- one of the -- the
2 jacket was from either a .40 caliber Smith & Wesson or 10mm;
3 correct?

4 A That is correct.

5 Q Why did you characterize your conclusion as either one or
6 the other?

7 A So when the manufacturer or the designer of a certain
8 cartridge is, you know, putting their features together for
9 this particular cartridge, they can take different items from
10 other cartridges in order to kind of make hybrid cartridges
11 essentially. And so for these two, they actually utilize the
12 same bullet. It's the same size; it's the same weight;
13 everything is the same with the bullet.

14 As you can tell from the photo, the only difference is the
15 length of the cartridge case. So you can see that the one on
16 the right is taller, and it's got more room in there for more
17 powder, and essentially it makes more, you know, pow aspect for
18 it; so it has a bigger bang. The first one is going to be your
19 .40 Smith & Wesson. It has a smaller cartridge case, but,
20 again, the bullets are the same.

21 So when I'm, you know, looking at a bullet, and strictly
22 just a bullet from a scene, if I don't have anything -- you
23 know, the whole piece put together, there's really no way for
24 me to determine which one it came from.

25 Now, the .40 Smith & Wesson is a more popular cartridge,

1 but it could still be from either one of them.

2 Q And that's what this photograph, Government's Exhibit 300,
3 demonstrates?

4 A Absolutely.

5 **MR. PRINCIPE:** Government moves Government's
6 Exhibit 300 into evidence.

7 **THE COURT:** Admitted.

8 **MR. PRINCIPE:** And permission to publish them?

9 **THE COURT:** You may.

10 **BY MR. PRINCIPE**

11 Q So the one on the left-hand side with the silver-colored
12 metal, that is which one?

13 A The one with the silver color is going to be your .40
14 Smith & Wesson, and the one with the gold color to the right is
15 going to be your 10mm, where it's longer and has more room for
16 more powder.

17 Q Now, at the crime scene at Carlton Crossing Drive, you
18 were not involved in collection of any evidence, were you?

19 A No, I never went on scene.

20 Q But after you performed your caliber determination, have
21 you reviewed information related to the shell casings found at
22 that crime scene?

23 A Yes. Within passing, I have seen bits and pieces of that.

24 Q Were any 10mm shell casings found at that crime scene?

25 A No. None were submitted to me and none were found.

1 Q Were .40 caliber shell casings found at that crime scene?

2 A Yes, they were.

3 Q I'm going to show you Government's Exhibit 301.

4 And what is this document a document of?

5 A This is a list, and it is a few pages long, and it shows
6 the extensive list of the multiple cartridges and types of
7 calibers that can fall within a caliber family. So it's just
8 an official document that we utilize in order to -- once we get
9 that diameter of the bullet, in order to try to figure out what
10 are our options that would potentially be caliber-wise that
11 fall in that family that we talked about earlier.

12 **MR. PRINCIPE:** Government moves Government's
13 Exhibit 301 into evidence.

14 **THE COURT:** Admitted.

15 **MR. PRINCIPE:** Permission to publish?

16 **THE COURT:** Yes.

17 **BY MR. PRINCIPE**

18 Q So this is a standard reference document that you use in
19 doing your firearms and toolmark examinations?

20 A Yes, that's correct.

21 Q Okay.

22 **MR. PRINCIPE:** If we will zoom in a little bit --
23 actually, let's go to page 2 and zoom in at the bottom third of
24 the page, the full third of the page.

25

1 **BY MR. PRINCIPE**

2 Q So what are the numbers on the left-hand side of those
3 lists?

4 A So if you can see, you see the .40, that's kind of out by
5 itself. That's that caliber family .40. And, again, that's
6 why when I did my GRC search, I had .40 in there and not 10
7 because .40 is the actual family that it's designated. And
8 then to the right of the .40 are the lists of all the
9 cartridges that fall within that family.

10 Q So there is actually many cartridges within the .40
11 caliber family that you eliminated as not being possibly
12 related to the bullet, Item 110 or Item 111?

13 A Correct, because what you're looking at with the family is
14 the diameter only. Weight is different and other design
15 features are different, and I was able to eliminate those due
16 to the fact that the diameter and the features and weight put
17 it just within the family for the .40 Smith & Wesson and the
18 10mm.

19 Q Thank you. I'm going to show you now Government's
20 Exhibit 302.

21 Now, this is a video clip. Are you familiar with this
22 video clip?

23 A Yes, I am.

24 Q What is this a video clip of?

25 A This is a video clip of a cycling of a firearm.

1 Q And would that be helpful in illustrating the testimony
2 you have given as far as how a firearm might leave toolmarks on
3 a bullet or shell casing?

4 A I think it would be very helpful if I could walk through
5 after it was published, yes.

6 **MR. PRINCIPE:** Government would move Government's
7 Exhibit 302 into evidence.

8 **THE COURT:** Admitted.

9 **MR. PRINCIPE:** Permission to publish?

10 **THE COURT:** You may.

11 **MR. PRINCIPE:** Let's play that one time.

12 (Government's Exhibit No. 302 was played.)

13 **MR. PRINCIPE:** So if we can bring that back to the
14 beginning.

15 **BY MR. PRINCIPE**

16 Q So can you describe some of the components of a
17 semiautomatic firearm like the one shown in this video?

18 A Yes, absolutely.

19 So for this particular firearm, we do have -- it's going
20 to be a magazine-fed firearm. So as you can tell, the
21 cartridges that are in that grip or the magazine well are, like
22 I mentioned earlier, the PEZ dispenser, how they are inserted
23 in.

24 What's going to happen is the first -- when the magazine
25 is inserted, first you need to chamber a cartridge. To chamber

1 a cartridge is to put the cartridge in place to be fired, which
2 is where that one that's kind of out by its side -- that
3 cartridge is. So you want to have it in the position that it
4 needs to be and not in the magazine anymore in order to have it
5 in that position for the firing pin to strike it.

6 Q Okay. And are the cartridges the yellow objects?

7 A Yes, the cartridges are the yellow.

8 Q And what is the gray thing that sticks off the right-hand
9 side of the gun?

10 A That's going to be the hammer. Not all firearms -- not
11 all semiautomatic pistols have hammers that are exposed like
12 that. So they can be a little different depending on the make
13 and model.

14 Q And where is the firing pin located within that diagram?

15 A So the firing pin, if you see towards the right -- kind of
16 to the right of the cartridge that's alone -- correct. So the
17 silver part in the middle is going to be the firing pin. There
18 is a lot of springs and housings. The firing pin is going to
19 be the actual tip that kind of comes very close in contact with
20 that cartridge right there.

21 Q Does the firing pin kind of poke the end of the bullet?

22 A Yes. So when the hammer is drawn backwards, it will
23 actually what they call cock the firing pin, and that's pulling
24 the spring to the rear, causing spring tension.

25 When the hammer then is released by pulling the trigger,

1 that's going to release the spring tension, which allows the
2 firing pin to fall down the channel and strike the firing
3 pin -- or the primer on the cartridge.

4 **MR. PRINCIPE:** Let's play the video one more time.

5 (Government's Exhibit No. 302 was played.)

6 **BY MR. PRINCIPE**

7 Q What kind of toolmark can be left on the cartridge when
8 the firing pin strikes the cartridge?

9 A So when the firing pin strikes the cartridge, first you
10 are going to have the firing pin impression that strikes the
11 primer, which is the smaller circle in the headstamp. Then
12 what you also can have, depending on the type of firearm, you
13 may have the opening of the firing pin, because that opening
14 has to be channeled out in the machining process of the
15 firearm. What -- that opening is what we kind of sometimes
16 call an aperture, because the word "aperture" actually means
17 opening. If anybody does cameras, you change the aperture
18 size. It is an opening. So it is the same thing with
19 firearms; it's the opening that the firing pin will come out
20 of.

21 That aperture can also impress a mark onto the headstamp
22 of the cartridge case in addition to also breech face marks,
23 which is the area around the aperture on the firearm.

24 Q Now, we talked about rifling before; is that right?

25 A Yes.

1 Q So where is the rifling in this diagram?

2 A So once the firing pin hits the primer -- the primer has a
3 lot of volatile chemicals inside that make a spark. They
4 ignite really quickly. With that quick spark, then it's going
5 to ignite the rest of the gun powder that's inside the
6 cartridge case. That gun powder is then going to ignite and
7 build up pressure.

8 Once the pressure is built up, that's going to cause the
9 bullet to be expelled from the barrel. As the bullet travels
10 down the barrel, that's when those rifling marks are imparted
11 on the bullet during that traveling.

12 Q Does that red oval shape indicate the area of the barrel
13 where rifling may be on a firearm?

14 A Yes, it does.

15 Q And, lastly --

16 **MR. PRINCIPE:** Play the video one more time.

17 (Government's Exhibit No. 302 played.)

18 **BY MR. PRINCIPE**

19 Q So what's happening at that moment where the video is
20 paused?

21 A So due to that built-up pressure that happens in the
22 chamber, once the bullet is expelled out the barrel, it also
23 causes the slide, which is that moving part up top, to go back
24 to the rear.

25 When that happens, you see the barrel doesn't move. The

1 barrel stays stationary for most the part. The slide will move
2 back to the rear. And it actually has a claw -- it is called
3 an extractor -- that keeps that rim of the cartridge case in
4 place.

5 So when the slide moves back to the rear, it's actually
6 going to pull that cartridge case out of the chamber and then
7 you're going to have an ejector, which is -- kind of sticks out
8 like this, which will then -- once it gets to that point, it
9 kicks it out the ejection port. So that's what's happening
10 right here.

11 Q Can that process also leave a toolmark on the shell casing
12 that's ejected?

13 A Yes. You can get marks from the ejector, you can get
14 marks from the extractor, and also from inside of the chamber
15 wall.

16 Q And that entire cycling process, as we've watched a few
17 times, how quickly can that cycle occur?

18 A So this is definitely slow motion. So it happens very
19 quickly; like I mentioned earlier, almost instantaneously.

20 Q I'm going to show you Government's Exhibit 303.

21 And what is this a diagram of?

22 A So this is another one those of diagrams that has a cut
23 section of two different types of rifling.

24 Q What are those two different types of rifling called?

25 A It's conventional and polygonal.

1 **MR. PRINCIPE:** Government would move Government's
2 Exhibit 303 into evidence.

3 **THE COURT:** Admitted.

4 **MR. PRINCIPE:** Permission to publish?

5 **THE COURT:** You may.

6 **BY MR. PRINCIPE**

7 Q What is the type on the left-hand side of the screen?

8 A So the left-hand is going to be your conventional rifling.

9 Q And on the right-hand side?

10 A Is your polygonal rifling.

11 Q What are you looking for on a bullet to determine if the
12 firearm that fired the bullet had conventional or polygonal
13 rifling?

14 A So during the examination, when I'm looking at that
15 bullet, either the jacket or the full bullet, when I'm looking
16 at it independently and drawing up my picture, making all my
17 notes, what I'm going to do is look at the rifling.

18 There's -- like I mentioned here, and you can see in the
19 picture, there's two different types. The conventional is cut
20 rifling. Kind of easy to remember, C for "conventional," C for
21 "cut." And you can see in the picture, because that's the
22 left-hand side -- now, that one is going to be where during the
23 manufacturing process, a tool will be used to go into the
24 barrel and cut grooves in the barrel.

25 For polygonal it's a little bit different. It is formed

1 rifling. So you have polygonal that's formed. What will
2 happen for that one is a mandrel, is what the piece called,
3 will be placed inside the barrel, and it is hammer-forged. So
4 all these hammers will beat on the outside of the barrel to
5 form and mold the metal around a -- pretty much a template.

6 So you have two different types of rifling. With that --
7 it's pretty obvious when you look at a bullet which one it is
8 because of the way that you can tell in the picture. One is
9 very defined and one is just kind of wavy.

10 So what I do, you know, or anybody -- you look at the
11 bullet. A good way and kind of an easy way that I've found to
12 figure out whether or not it's conventional or polygonal is
13 actually you kind of run your fingernail around the
14 circumference of the bullet, and if it catches, it is cut,
15 because it actually has something to catch on to. There's
16 something cut there. If it just kind of flows around and it
17 just moves back around the circumference, then it's actually
18 going to be that formed, more wavy rifling.

19 So those are two different design features that, depending
20 on the manufacturer, they will utilize to actually make their
21 barrels. This is important because, as you saw earlier in the
22 GRC when I said I put in 00 right before the break, that's
23 because with polygonal rifling, you don't have defined
24 shoulders to measure from one point to point -- from like Point
25 A to Point B. And when you don't have those defined shoulders,

1 you can't get a measurement, so they just say zero to zero
2 because it's not consistent enough.

3 Q Okay. Let's discuss the second examination you did as
4 part of the investigation.

5 I'm showing you now Government's Exhibit 304.

6 And do you recognize that document?

7 A Yes, I do.

8 Q And that document is close to 81 pages; is that right?

9 A Yes, it is.

10 Q Okay. And this was the more extensive examination that
11 you performed?

12 A Yes, it was just more lengthy with more evidence.

13 **MR. PRINCIPE:** Government moves Government's
14 Exhibit 304 into evidence.

15 **THE COURT:** Admitted.

16 **MR. PRINCIPE:** Permission to publish?

17 **THE COURT:** You may.

18 **MR. PRINCIPE:** If we can zoom in on just the top
19 third.

20 **BY MR. PRINCIPE**

21 Q So this has the same incident number at the top; correct?

22 A Yes, it does.

23 Q The date of your report was July 17, 2019; is that
24 correct?

25 A That is correct.

1 Q Let's talk about the items submitted.

2 What does that mean?

3 A So when the request is made from the investigator or the
4 officer, they will actually denote which items they want us to
5 examine. These were the items that they wanted us to examine
6 for this case. So those were the ones that I signed out of
7 property and opened and did my examination on.

8 Q Okay. What are the first two items on that list?

9 A The first two items are -- one of them is Item 40, which
10 is a 9mm FN semiautomatic pistol, and 39 is an FN magazine.

11 Q And what is the model of the pistol, Item No. 40?

12 A The model is FNS9.

13 Q Now, are those item numbers the Durham Police Department
14 item numbers?

15 A Yes, they are.

16 Q Do those typically correspond to a Property and Evidence
17 Voucher document that's maintained as part of the investigative
18 case file?

19 A Yes. Everything is digital, so it will correspond with
20 the barcode and everything in there.

21 Q Now, when you're taking evidence out to perform your
22 examination, do you generally have a lot of knowledge about an
23 investigation or a little bit of knowledge about an
24 investigation?

25 A I actually have very little knowledge about the

1 investigation due to the fact that I don't actually go on scene
2 and I stay in the lab.

3 Q Okay. What did you do when you take a piece of evidence
4 out of the property to use for your examination?

5 A So once we sign it out of property, we will start our
6 investigation. And as I mentioned earlier, I will actually
7 independently look at every item of evidence and write up a
8 worksheet on each item prior to doing any analysis or
9 comparison.

10 Q And can you slowly go through each of the items that you
11 examined as part of this examination --

12 A Yes, I can.

13 Q -- starting with Item 5.

14 A Can I refer to my notes?

15 Q Either your notes or the screen, whatever is easier for
16 you.

17 A I can do it on here, then.

18 Item 5 is a Winchester, caliber 9mm, fired cartridge case.

19 Item 6 is a Starline, caliber 9mm, fired cartridge case.

20 Item 7 is a Winchester, caliber 9mm, fired cartridge case.

21 Item 8 is a Blaser, caliber 9mm, fired cartridge case.

22 Item 9 is a Federal, caliber 9mm, fired cartridge case.

23 Item 10 is a PMC, caliber 9mm, fired cartridge case.

24 Item 11 is a Blaser, caliber 9mm, fired cartridge case.

25 Item 12 is a Speer, caliber 9mm, fired cartridge case.

1 Item 13 is a Winchester, caliber 9mm, fired cartridge
2 case.

3 Item 14 is an HRTS, caliber 9mm, fired cartridge case.

4 Item 15 is a PPU, caliber 9mm, fired cartridge case.

5 Item 16 is an S&B, caliber 9mm, fired cartridge case.

6 Item 17 is a Blaser, caliber 9mm, fired cartridge case.

7 Item 18 is a Federal, caliber 9mm, fired cartridge case.

8 Item 19 is a GFL, caliber 9mm, fired cartridge case.

9 Item 20 is a Winchester, caliber 9mm, fired cartridge
10 case.

11 Item 21 is a Winchester, caliber 9mm, fired cartridge
12 case.

13 Item 22 is a Winchester, caliber 9mm, fired cartridge
14 case.

15 Item 23 is a Winchester, caliber .40 Smith & Wesson, fired
16 cartridge case.

17 Item 24 is a Winchester .40 Smith & Wesson fired case.

18 Item 25 is a Winchester, caliber .40 Smith & Wesson, fired
19 cartridge case.

20 Item 26 is a Winchester, caliber .40 Smith & Wesson, fired
21 cartridge case.

22 Item 27 is a Winchester, caliber .45 auto, fired cartridge
23 case.

24 Item 28 is a Winchester, caliber .45, fired cartridge
25 case.

1 29 is a Federal, caliber 9mm, unfired cartridge.

2 Item 30 is a Speer, caliber 9mm, unfired cartridge.

3 Item 31 is a Remington, caliber 9mm, unfired cartridge.

4 Item 32 is a Winchester, caliber 9mm, fired cartridge
5 case.

6 Item 33 is a Winchester, caliber 9mm, fired cartridge
7 case.

8 Item 34 is a Winchester, caliber 9mm, fired cartridge
9 case.

10 Item 42 is one fired jacketed bullet.

11 Item 43 is one fired jacketed bullet.

12 Item 44 are two copper and lead fired bullet jacket
13 fragments.

14 Item 51 is one lead core.

15 Item 52 is one fired jacket.

16 Item 53 is one fired jacket -- bullet. The first one was
17 a jacketed bullet too. I'm sorry.

18 52 is also a jacketed bullet.

19 53, jacketed bullet.

20 54, one fired jacketed bullet.

21 54, one fired jacketed bullet.

22 63, one fired jacketed bullet.

23 79, one fired jacketed bullet.

24 102, one partial fired bullet jacket.

25 103 is one partial fired bullet jacket.

1 104 is one lead core.

2 110 is one bullet core.

3 And 111 is one bullet jacket.

4 Q And aside from the last two items, Items 110 and 111, were
5 all of the other items collected from the crime scene at
6 4617 Carlton Crossing Drive?

7 A Yes, to my knowledge, I believe so.

8 Q I would like to show you Government's Exhibit 270.
9 Do you recognize that item?

10 A Yes, I do.

11 Q And what is that?

12 A That is the firearm that I examined in this case.

13 Q As part of your examination, did you test-fire that
14 firearm?

15 A Yes, I did.

16 Q Did it fire?

17 A It did.

18 Q What did you collect after test-firing that firearm?

19 A So when we test-fire a firearm, we will use lab stock
20 ammunition and -- which just means ammunition that we have
21 purchased to fire -- test-fire the firearm and collect -- we
22 want to do it at least twice, so we'll collect two bullets and
23 two cartridge cases from that, if not more.

24 Q What do you use those for?

25 A We use them as our known samples for analysis.

1 Q And what do you fire that firearm into -- or the bullets
2 into?

3 A We have a few different devices, but for this case, I
4 fired it into -- it is called a Savage Range Buddy, and it is
5 made up of ballistic balls that are kind of rubber in
6 consistency, and they stop the bullet from traveling outside of
7 the tube that they are housed in in order for us to collect the
8 bullets.

9 Q I am now showing you Government's Exhibit 265. Now, did
10 you have a magazine from that firearm?

11 A Yes, I did.

12 Q But it was a different magazine than this one; correct? I
13 believe you had Item 39, one FN magazine?

14 A Yeah, that sounds right. Correct.

15 **MR. PRINCIPE:** And that was previously identified
16 yesterday as another magazine collected from Carlton Crossing
17 Drive. And if you will now show them Government's Exhibit 267.

18 And this is Item 37, which was the ammunition that
19 was taken out of that magazine.

20 If you can zoom in on about half of those.

21 **BY MR. PRINCIPE**

22 Q Are you able to see the manufacturing identifiers on the
23 bottom of those bullets?

24 A Yes, I am able to read most of them.

25 Q Do you recognize some of those?

1 A I recognize the manufacturers, yes.

2 Q Are they the same, or is there a wide range of different
3 manufacturers?

4 A I see a wide range. I see S&B, Blaser, Perfecta, Federal.

5 Q If we will look at the other half of those, can you
6 recognize any of those?

7 A Yes, I see PPU is another additional one.

8 Q Thank you.

9 Now, as part of your examination, you looked at 9mm shell
10 casings; correct?

11 A Correct.

12 Q .40 caliber shell casings?

13 A Correct.

14 Q And .45 caliber shell casings?

15 A Yes.

16 Q I'm going to show you what's already in evidence as
17 Government's Exhibit 91.

18 Do you recognize at least what's described on this
19 envelope?

20 Let me see if I can get that in focus.

21 A Yes, I recognize it.

22 Q Are those Durham Police Department Items 5, 6 and 7?

23 A Yes, it is.

24 Q And are those items that you examined as part of your
25 examination?

1 A Yes, they are.

2 Q Is that what they looked like when you took them out for
3 examination?

4 A Yes, they did.

5 Q Those were 9mm casings; correct?

6 A Yes, they were.

7 Q I show you now what's in evidence as Government's
8 Exhibit 97. And those are Durham Police Department Items 22,
9 23, and 24.

10 You looked at those as part of your examination; correct?

11 A Yes.

12 Q And the difference here is these are .40 caliber cartridge
13 cases?

14 A Correct.

15 Q I'm going to open that.

16 So you looked at all three of those; correct?

17 A That's correct.

18 Q Is that how they looked like when you took them out for
19 examination?

20 A Yes.

21 Q Now I'm showing you Government's Exhibit 99 which lists
22 Durham Police Department Item Nos. 27 and 28. And you examined
23 those as part of your examination; correct?

24 A Yes, I did.

25 Q And the difference there is those are .45 caliber

1 cartridges?

2 A Correct.

3 Q I am going to open that envelope.

4 Is that what they looked like when you took them out for
5 your examination?

6 A Yes.

7 Q I just showed you an example of 9mms, .40 and .45. But
8 you opened all of the packages and looked at all the items that
9 you listed on your report; correct?

10 A That is correct.

11 Q Going back to your report, Government's Exhibit 304, I
12 want show you some diagrams on pages 26 through 55.

13 Do you see that diagram?

14 A Yes, I do.

15 Q And there's a drawing on there?

16 A Yes.

17 Q So explain to me what that page represents, that entire
18 page.

19 A So this page is similar to the one we talked about with
20 the bullet. I will put down basic information that I read on
21 the headstamp. I will look at features and marks that are
22 imparted on the cartridge case that I have noted by looking at
23 my stereo microscope, and I will draw a picture showing where
24 those marks are and any notable features that I feel like need
25 to be noted on that.

1 Q And what item number does this page refer to?

2 A This item number is 5.

3 Q And you made a diagram like that for each one of the items
4 that you looked at?

5 A Correct. As I mentioned, I like to look at every item
6 independently prior to any type of comparison.

7 **MR. PRINCIPE:** Go to the next page.

8 **BY MR. PRINCIPE**

9 Q Is that the diagram you did for Item No. 6?

10 A Yes, it is.

11 Q And next page, Item No. 7?

12 A Correct.

13 Q Now, we're looking at Item No. 8?

14 A Yes.

15 Q Item No. 9?

16 A Yes.

17 Q Item 10?

18 A Yes.

19 Q Item 11?

20 A Correct.

21 Q Item 12?

22 A Yes.

23 Q So you did that for each of the items you looked at;
24 correct?

25 A I did.

1 Q Was that one of the first things that you did?

2 A Yes.

3 Q Why is that?

4 A I just find it very important to, like I said, look at
5 every item of evidence independently and note any marks that I
6 find just looking at that item; and then once I have a good
7 idea of what each item of evidence and the marks that they
8 hold, then I can characterize and compare them via common class
9 characteristics.

10 So like I mentioned earlier, you won't have a square hole
11 or a square aperture make a round aperture, essentially. So if
12 I can go ahead and look at them and draw pictures of their
13 characteristics, then I know which items need to be compared to
14 each other further by just their class characteristics.

15 Q Okay. I'm showing you now page 10 of your report.

16 Can you explain to the jurors what you were notating on
17 this page?

18 A So once I have looked at everything independently and I
19 make my comparisons and I start to group items into, in my
20 opinion, firearms that had fired these items, I do like a
21 summary page. And this one helps me, especially in times like
22 now when in I'm court, to remember what I looked at and the
23 groups that I had the items kind of grouped into for my report.
24 Sometimes the words can just get very wordy. This helps me see
25 it a lot more visual because I had the pictures of what these

1 firing pins looked like beside them.

2 Q So at this stage you're starting to group things together
3 that are similar?

4 A Yes.

5 **MR. PRINCIPE:** If you will zoom in just on the top
6 two.

7 **BY MR. PRINCIPE**

8 Q And you have a "9mm" written next to both of those?

9 A Yes, I do.

10 Q And what is the little picture you drew there?

11 A Those are of the firing pin and the apertures. So the one
12 to the left you can see is a circle with a circle outside of
13 it. So that shows me that the aperture, which is that opening
14 that the firing pin comes out of, is a circle aperture, and
15 then the firing pin with circle.

16 The little tongue that sticks out up top is called a
17 firing pin drag, and that happens when the slide is coming back
18 to the rear and the firing pin is still sticking out a little
19 bit. So it shows that the firing pin is still protruded when
20 there's movement going in the chamber and it makes a drag mark.

21 Q What does that mean that you wrote 5, 12, 32, 33, and 34
22 underneath that diagram?

23 A So those were the item numbers that had those features
24 that were consistent with that group.

25 Q Okay. Was the features of Item No. 6 different?

1 A Yes.

2 Q Is that why you listed it separately?

3 A It's why I listed it separately and drew a different
4 picture, because you can tell the aperture for that one is
5 actually rectangle.

6 Q And that's what you saw when you looked at them closely?

7 A Correct.

8 Q And now if we move down, you made similar groupings for
9 another 9mm?

10 A Correct.

11 Q And for a .40 Smith & Wesson?

12 A Yes.

13 Q And for a .45 caliber grouping; correct?

14 A Yes.

15 Q So how many different groupings did you end up with that
16 were 9mm caliber?

17 A There were three different groupings for 9mms.

18 Q And that was primarily based on the different toolmarks
19 that you observed on those items?

20 A Yes.

21 Q How many different ones did you end up with for .40
22 caliber?

23 A For .40 caliber, I just had one group.

24 Q And for .45 caliber?

25 A Also just one group.

1 Q I would like to go to page 15.

2 What are we seeing on page 15 of your report?

3 A So those are the photographs I took during my actual
4 examination on the comparison microscope. So these are similar
5 to the ones that we had in the slides before, but these were
6 ones that I had actually taken for this case.

7 What you have on the top is two exhibits compared side by
8 side, and this will be Item 7 and Item 13. And so what you can
9 see in this picture is that you have these individual lines. A
10 lot of times, they are -- the brighter lines are the ones that
11 I am looking at, the striations that are corresponding and
12 lining up between the two sides.

13 And this is just a snapshot of my entire analysis and
14 every aspect of the cartridge case that I looked at, but I like
15 to take a representation photograph for court purposes of some
16 of the detail that I used for my conclusion.

17 **MR. PRINCIPE:** Go to the next page.

18 **BY MR. PRINCIPE**

19 Q And there is another example?

20 A Yes.

21 **MR. PRINCIPE:** Go to the next page.

22 **BY MR. PRINCIPE**

23 Q Is that another example?

24 A Yes.

25 Q So you did this multiple times throughout your process;

1 correct?

2 A Yes. There will be a photo of every single one of my
3 identifications with using one of the cartridge cases as, like,
4 a guide.

5 **MR. PRINCIPE:** If we can go to page 5.

6 **BY MR. PRINCIPE**

7 Q And what have you done here on page 5 of your report?

8 A So on page 5 and the other pages are just me writing out
9 my conclusions and the parts that I am looking at, the areas
10 that I am looking at for my comparison and what my conclusions
11 were.

12 Q Okay. Can you give us an example with regard to that
13 first area, items -- starting with Items 5, 12, 32, and 33 and
14 34?

15 A Yes. So what I wrote is for those items, there was
16 agreement inside the firing pin impression, the sheer mark at
17 6 o'clock position, area around the breech face, and I drew a
18 little picture and I said the agreement is sufficient for an
19 identification or an ID.

20 Q And that means sufficient for an identification in your
21 opinion?

22 A In my opinion, correct.

23 Q And then below that, there is another grouping that starts
24 with Item 7; is that right?

25 A Correct.

1 Q And you made a similar conclusion with regard to those
2 items?

3 A Yes. I said that the agreement on the breech face at 3
4 and 6, that's o'clock positions, on the primer and on the
5 headstamp and inside the firing pin impression -- again, they
6 were -- agreement was sufficient for an ID.

7 Q Okay. And now focusing on Item 6, what did you note about
8 item 6?

9 A I said that the firing pin shape was elliptical and that
10 it was unlike any of the other 9mms that were submitted in this
11 case. Therefore, it was an elimination.

12 Q And by eliminating it, what does that actually mean?

13 A It means that, in my opinion, it was not fired from the
14 same firearm as any of the other 9mms from that case.

15 Q So that one stands alone?

16 A It stands alone.

17 **MR. PRINCIPE:** Go to page 6. Let's focus on the
18 first third of that page.

19 **BY MR. PRINCIPE**

20 Q What did you note about the items starting with Item 22?

21 A So I said that the Items 22, 23, 24, 25, and 26 -- that
22 there was agreement inside the aperture sheer mark at 6 o'clock
23 and inside the firing pin impression. Agreement is sufficient
24 for ID.

25 Q Okay. And then the middle, Items 27 and 28?

1 A I said that agreement across the breech face at 6 o'clock
2 and 12 o'clock and also inside the firing pin impression --
3 that the agreement was sufficient for ID.

4 Q Okay. And, lastly, at the bottom?

5 A I said Items 29, 30, and 31 were unfired cartridges. They
6 were not examined, but then I did examine them. I said it
7 cannot be compared due to too many unknown marks and lack of
8 orientation. And what this means is essentially they had so
9 many erroneous marks that due to the fact that they weren't
10 fired and I couldn't orient what -- where the marks should lie,
11 I was unable to be able to tell any type of marks that would be
12 able to be used for comparison.

13 And this is kind of indicative for a cartridge, because a
14 cartridge that is unfired that has been loaded into a firearm
15 multiple times, it's getting marked up multiple times, and none
16 of them are firing marks. So those are the definitive marks
17 for firing.

18 If it were a clean cartridge, like it had never been in a
19 gun before and it had just one mark or two marks on it, then it
20 might be used for some type of analysis or comparison. But
21 once it gets too many marks, it's just not helpful for anybody
22 to look at it for comparison value. It is not reliable.

23 Q Let's talk about some of the conclusions that you reached.
24 If I can direct you to paragraph 1 of your report. And if you
25 will refer to your own personal copy.

1 A Okay.

2 Q What did you conclude with regard to paragraph 1?

3 A So in paragraph 1, I said that Items 5, 12, and 32 through
4 34, cartridge cases, which were 9mms, were microscopically
5 compared and determined to have similar class characteristics
6 and sufficient agreement of individual characteristic. So,
7 therefore, in my opinion, they were fired in the same firearm.

8 Q Okay. So that would be one 9mm firearm associated with
9 those cartridges?

10 A Correct.

11 Q What about in paragraph 2? What did you determine?

12 A That's where I talked about Item 6. That kind of stood
13 alone. It was also a 9mm, but it had different class
14 characteristics from the other 9mm cartridge cases. And,
15 therefore, it was eliminated from being -- in my opinion, it
16 was eliminated from being fired from the same firearm as the
17 other items.

18 Q Okay. So that would be a second 9mm handgun?

19 A Correct.

20 Q And what did you determine with regard to paragraph 6? I
21 apologize. I'm sorry.

22 Start with paragraph 3. What did you determine in
23 paragraph 3?

24 A So Items 7 through 11 and 13 through 21, cartridge cases,
25 they were also 9mms. I microscopically compared and determined

1 them to have similar class characteristics and sufficient
2 agreement of individual characteristics. Therefore, in my
3 opinion, they were fired from the same firearm.

4 Q And then to jump to paragraph 6, what did you conclude in
5 paragraph 6?

6 A I said, using ammunition from lab stock, Item 40, pistol,
7 was test-fired and the recovered cartridge cases were compared
8 to Items 7 through 11 and Items 13 through 21, cartridge cases,
9 and that they had similar class characteristics and sufficient
10 agreement of individual characteristics. Therefore, in my
11 opinion, those items were fired from the Item 40 pistol.

12 Q And that was the firearm that was recovered from Carlton
13 Crossing Drive?

14 A Correct.

15 Q And so the items listed in paragraph 3 you concluded were
16 fired from that pistol?

17 A Yes, I did.

18 **MR. PRINCIPE:** If we can zoom in on those items. If
19 you can highlight or zoom in on Items 7 through 11 first.

20 **BY MR. PRINCIPE**

21 Q Okay. Are there about four different brands of 9mm
22 cartridges there?

23 A Yes, there are.

24 **MR. PRINCIPE:** If you can zoom on Items 13 through
25 21.

1 **BY MR. PRINCIPE**

2 Q Again, is there a wide range or number of different
3 manufacturers of shell casings?

4 A There is a wide range; correct.

5 Q Now, what was your opinion that you made in paragraph 4?

6 A In paragraph 4, I said Items 22 through 26, which were .40
7 Smith & Wesson, were microscopically compared and determined to
8 have similar class characteristics and sufficient agreement of
9 individual characteristics. Therefore, in my opinion, Items 22
10 through 26 were fired in the same firearm.

11 Q What was your opinion in paragraph 5?

12 A In paragraph 5, I said Items 27 and Items 28, which were
13 .45 caliber cartridge cases, were microscopically compared and
14 determined to have similar class characteristics and sufficient
15 agreement of individual characteristics. Therefore, in my
16 opinion, they were fired in the same firearm.

17 Q Now, I would like to show you Government's Exhibit 305.

18 Do you recognize this document?

19 A I do.

20 Q And is this a summary chart that was prepared for trial?

21 A Yes, it was.

22 Q Did you have an opportunity to look at this chart and
23 compare it against the conclusions you reached in your report,
24 Government's Exhibit 304?

25 A Yes, I was.

1 Q Did you find this summary chart to be accurate in terms of
2 reflecting five separate potential firearms that fired shell
3 casings collected from the scene at Carlton Crossing Drive?

4 A I do find it accurate.

5 **MR. PRINCIPE:** Government moves Government's
6 Exhibit 305 into evidence.

7 **THE COURT:** Admitted.

8 **MR. PRINCIPE:** And permission to publish?

9 **THE COURT:** You may.

10 **MR. PRINCIPE:** So if we can zoom in on the top third
11 of the page.

12 **BY MR. PRINCIPE**

13 Q What are the five different headers there?

14 A So the five different headers is -- the first blue header
15 is Item 40, FNS 9mm and 9mm G1.

16 Q Okay. And the second column?

17 A The second column in red is .40 caliber G2.

18 Q The third column?

19 A Is green, .45 caliber G3.

20 Q The fourth column?

21 A It's in purple, and it's 9mm G4.

22 Q And the last column?

23 A It's in yellow, and it's 9mm G5.

24 Q So each of those colors represents a potential separate
25 firearm that could have discharged shell casings that were

1 found at the Carlton Crossing Drive crime scene?

2 A Correct.

3 Q How many shell casings were determined to be fired for the
4 G5 that's in yellow?

5 A Just one.

6 Q And the 9mm G4?

7 A Five.

8 Q The .45 caliber G3?

9 A Two.

10 Q The .40 caliber G2?

11 A Five.

12 Q And then the Item 40 handgun identified as G1, how many
13 total shell casings were fired by that firearm?

14 A Fourteen. And, also, I linked it back to that firearm,
15 Item 40.

16 Q Okay. Now I would like to show you Government's
17 Exhibit 288.

18 Are you familiar with this diagram that was prepared by a
19 crime scene investigator, Ben Shields?

20 A Yes, I am.

21 Q And he discussed this diagram as being where he had marked
22 different cartridge casings of different calibers at the
23 Carlton Crossing crime scene. Is that your understanding?

24 A Correct.

25 Q And the numbers on there are not Durham Police Department

1 item numbers, are they?

2 A No, those are placard numbers.

3 Q Okay. Because he's working with the placards that he is
4 placing down at the crime scene; correct?

5 A That is correct.

6 Q Now I am going to show you Government's Exhibit 289, which
7 was marked for identification yesterday but not introduced.

8 And do you recognize that diagram?

9 A Yes, I do.

10 Q Does this diagram incorporate the analysis that you
11 performed in your second examination?

12 A It does.

13 Q Does it use the reference to the different firearms by
14 using color coding and the references to G1 through G5?

15 A Yes, it does.

16 Q And even though -- the numbers on that diagram still
17 correspond to the placards that were in place at the crime
18 scene; correct?

19 A Yes, they are still the placard numbers.

20 Q Did you have an opportunity to cross-check those placard
21 numbers against the corresponding item numbers to make sure
22 that this diagram is consistent with your analysis?

23 A I did.

24 Q And is it?

25 A It is.

1 **MR. PRINCIPE:** The Government would move Government's
2 Exhibit 289 into evidence.

3 **THE COURT:** Admitted.

4 **MR. PRINCIPE:** Permission to publish?

5 **THE COURT:** You may.

6 **MR. PRINCIPE:** I would like to zoom in on a couple
7 different portions. First let's zoom in on the area near the
8 front porch.

9 **BY MR. PRINCIPE**

10 Q So is it accurate that the green color corresponds to .45
11 caliber shell casings?

12 A Correct.

13 Q And those were identified on the front porch?

14 A Yes.

15 Q And the blue color were shell casings fired by the Item 40
16 pistol?

17 A The blue color -- yes, Item 40. Correct.

18 Q And then the yellow coloration refers to a separate 9mm
19 pistol; is that right?

20 A Yes, that's correct.

21 **MR. PRINCIPE:** Let's back out. And now if we focus
22 on the area around the minivan.

23 **BY MR. PRINCIPE**

24 Q And there is two colors there; correct?

25 A Yes.

1 Q And one of them refers to .40 caliber cartridges that were
2 collected near the street or sidewalk?

3 A Yes.

4 Q And then there was one purple color that represents a
5 separate 9mm handgun?

6 A That is correct.

7 **MR. PRINCIPE:** If we can back out and then zoom in on
8 the area around the other vehicles that were parked on the
9 street.

10 **BY MR. PRINCIPE**

11 Q And there we have two red shell casings and then four
12 yellow shell casings; correct?

13 A That is correct.

14 **MR. PRINCIPE:** If we back out.

15 **BY MR. PRINCIPE**

16 Q And the red corresponds to .40 caliber shell casings?

17 A Yes.

18 Q And the yellow corresponds to 9mm shell casings that were
19 not associated with the Item 40 handgun; correct?

20 A Correct.

21 Q Did you also examine bullets as part of your examination
22 No. 2?

23 A Yes, I did.

24 Q And I would like to refer you to paragraph 7.

25 What was your conclusion in paragraph 7?

1 A I said that the examination of Items 42, 52, 63, and 103
2 disclosed the bullets to be 9mm.

3 Q Do you know where those bullets were collected from?

4 A I do not.

5 Q Okay. Would looking at a copy of the Property and
6 Evidence Voucher that's in evidence help you identify what
7 those item numbers correspond to in terms of where those items
8 were located when they were collected?

9 A Yes, I could read those property reports.

10 **MR. PRINCIPE:** May I approach the witness, Your
11 Honor?

12 **THE COURT:** You may.

13 **BY MR. PRINCIPE**

14 Q First, I would like to focus on Item 42. We'll also pull
15 up Government's Exhibit 274 on the monitor.

16 Where was Item 42 collected from?

17 A Forty-two says it was collected from the floor in the
18 foyer just inside the doorway.

19 Q Okay. Now, Government's Exhibit 280, that shows Item 52.

20 Where was Item 52 collected from?

21 A Interior right rear quarter panel of F3. I don't know
22 what that means.

23 Q And Government's Exhibit 264, that's item 63. Where was
24 that collected from?

25 A Located on floor of entryway at 4618 Carlton Crossing.

1 Q And, last, Government's Exhibit 268, which is Item 103,
2 where was that collected from?

3 A Under front left tire of tan van in roadway on Carlton
4 Crossing.

5 Q And you determined that each of those was a 9mm caliber
6 bullet?

7 A Correct.

8 Q Were you able to determine rifling characteristics
9 associated with those items and reach some conclusions in
10 paragraph 15?

11 A Yes.

12 Q And what were your conclusions about those four items?

13 A I said that the examination of the general rifling
14 characteristics of Items 42, 52, and 103 -- they were -- had
15 similar rifling characteristics and they -- the items that
16 could be fired from those are a list of firearms.

17 Do you want me to read the full list?

18 Q Is it a large number of firearms?

19 A It is a very large number, yeah.

20 Q Okay. And now I am directing you to paragraph 16.

21 What did you determine with regard to Item 63?

22 A Sixty-three was disclosed to be -- have similar rifling
23 characteristics to a separate list.

24 Q Okay. Can you identify that list?

25 A That one is much shorter. I can read that one.

1 Q Okay.

2 A It's Bersa, FIE, Glock, H&K, IMI, Kahr, LIW, and other
3 possible known -- unknown to the examiner.

4 Q Okay. Did you reach a conclusion with regard to three of
5 those 9mm projectiles, 42, 52 and 103 in paragraph 12?

6 A Yes. So in paragraph 12, I microscopically compared those
7 items and determined them to have similar class characteristics
8 and sufficient agreement of individual characteristics.
9 Therefore, in my opinion, they were fired from the same
10 firearm.

11 Q Now I want to direct your attention to paragraph 8.
12 What did you conclude about those items?

13 A Items 53, 54, 79, 110 and 111 were determined to be
14 caliber .40 Smith & Wesson/10mm.

15 Q Where was Item 53 collected from?

16 A The left front door interior panel.

17 Q Does it list a location where that was collected from, an
18 address?

19 A I believe they are all from the 4617 Carlton Crossing
20 Drive.

21 Q So that would be left front door of a vehicle at that
22 address?

23 A Correct.

24 Q Item 54?

25 A The left front door interior panel.

1 Q Item 79?

2 A Interior right front seat in silver Toyota Sienna.

3 Q And then Items 110 and 111?

4 A 110 was from the victim, collected at the OCME.

5 Q And 111?

6 A From the victim, collected at the OCME.

7 Q Now I want to direct your -- to paragraph 17.

8 What conclusion did you reach in paragraph 17?

9 A The examination of the general rifling characteristics for
10 items 53, 54, 79, and 111 had the same rifling characteristics,
11 and they could be fired from a Bersa, Glock, H&K, IMI, Kahr,
12 Vector, and possible others.

13 Q Okay. And why was 110 not included on that list for that
14 conclusion?

15 A Because 110 was that lead core that we had looked at in
16 the initial examination, and it had no rifling characteristics.

17 Q So you couldn't make that determination; is that right?

18 A Correct.

19 Q I would like to direct your attention to your conclusion
20 in paragraph 9. What was your conclusion?

21 A Examination of the 43 -- Item 43, bullet, was a .45
22 caliber.

23 Q Okay. And where was that item located?

24 A In wall behind freezer in living room.

25 Q And what was the address?

1 A 4617 Carlton Crossing Drive.

2 Q And what was your conclusion in paragraph 18 of your
3 report?

4 A Examination of the general rifling characteristics of
5 item 43 were consistent with having been fired from an Eagle
6 Arms, a National Cartridge, or Taurus, and then possible others
7 unknown to the examiner.

8 Q Are you familiar with Taurus firearms?

9 A Yes, I am.

10 Q Have you ever heard of a Millennium .45?

11 A Yes, I have.

12 Q Is that a Taurus firearm?

13 A Yes, it is.

14 Q I would like to direct your attention to paragraph 10.
15 What was your conclusion in paragraph 10?

16 A Examination of the 44, 51, 102, and 104 items were bullets
17 or fragments that the caliber was unknown.

18 Q And why were they unknown?

19 A Due to the state that they were when I got them, either
20 they didn't have enough weight or the diameter wasn't there for
21 me to be able to determine an accurate caliber.

22 Q Okay. And let's go through the location of where they
23 were found.

24 Where was Item 44 located?

25 A In wall of foyer opposite doorway.

1 Q Item 51?

2 A Interior plastic panel of rear hatch.

3 Q And what was the location for that item or address?

4 A It was at 4617 Carlton Crossing Drive.

5 Q Item 102?

6 A From sidewalk in front of 4619 Carlton Crossing.

7 Q And Item 104?

8 A Located inside left front tire of tan van in roadway on
9 Carlton Crossing Drive.

10 Q Were you able to exclude -- well, let me just direct your
11 attention to your conclusion in paragraph 19.

12 You mentioned before that you test-fired Item 40?

13 A Correct.

14 Q Did you compare the bullet that you test-fired from Item
15 40 to the 9mm bullets?

16 A Yes, I did.

17 Q And what conclusion did you reach in paragraph 19?

18 A So using, again, laboratory stock and from firing that .40
19 caliber pistol, we recovered the bullets, the test-fired
20 bullets, and they were compared to the 9mm bullets in the case.
21 And they were found to have some similar class characteristics,
22 but lacked sufficient agreement of individual characteristics
23 for an identification. Therefore, in my opinion, they were not
24 fired from the Item 40 pistol.

25 Q So you were able to exclude those bullets as having been

1 fired from that handgun?

2 A Correct.

3 Q And where was Item 42 collected from?

4 A On floor in foyer just inside the doorway.

5 Q And Item 52?

6 A Interior right rear quarter panel from a car at 4617
7 Carlton Crossing Drive.

8 Q And Item 63?

9 A Located on the floor of the entryway at 4618 Carlton
10 Crossing Drive.

11 Q 4618?

12 A 4618 is what it says.

13 **MR. PRINCIPE:** Your Honor, I would like to publish
14 Government's Exhibit 15.

15 **THE COURT:** All right.

16 **MR. PRINCIPE:** And Government's Exhibit 17.

17 **BY MR. PRINCIPE**

18 Q So that was excluded as being fired from the Item 40
19 pistol?

20 A Correct.

21 Q And Item 103?

22 A Under front left tire of tan van in roadway on Carlton
23 Crossing.

24 Q And then in paragraph 20, what conclusion did you reach?

25 A Items 29, 30, and 31 were unfired 9mm cartridges. They

1 were examined and found to have multiple miscellaneous cycling
2 marks that appeared to have been reloaded. No comparison could
3 be completed.

4 Q Why did you not complete a comparison?

5 A As I mentioned earlier, there was just so many markings on
6 those that any type of conclusions would have been inaccurate
7 or unable to really get a definitive on that.

8 **MR. PRINCIPE:** I have no additional questions, Your
9 Honor.

10 **THE COURT:** All right. Any cross?

11 CROSS-EXAMINATION

12 **BY MR. FOSTER**

13 Q So, Ms. Anderson, you testified about five bullets that
14 you determined to be .40 -- either .40 caliber Smith & Wesson
15 or 10mm. This was in paragraph 8 of your report on page 3,
16 Items 53, 54, 79, 110 and 111; correct?

17 A That is correct.

18 Q Okay. And so I gathered from your testimony referring to
19 the evidence log -- I'm sorry -- the Property and Evidence
20 Voucher, that the first of those three items -- or the first
21 three of those items, 53, 54 and 79, all were removed from the
22 vehicle that was at the scene of the crime; correct?

23 A I would have to look that up. Do you want me to look it
24 up to verify?

25 Q Well, you read those off a minute ago. I mean, you said

1 79 was from the Sienna and then 53 and 54 were from the
2 vehicle -- although it didn't say Sienna, it was the vehicle
3 that was at 4617 Carlton Crossing; correct?

4 A That sounds correct.

5 Q And then Nos. 110 and 111 came from the victim's body via
6 the Office of the Chief Medical Examiner?

7 A That is correct.

8 Q Now, on page 1 of your report, you listed Item 22 as being
9 a 9mm, but then another in another exhibit -- well, do you
10 recall that? Do you see that in front of you?

11 A I'm sorry. What item were you talking about again?

12 Q Item 22.

13 A Yes, that's a 9mm.

14 Q Okay. Then if you go to page 43 of your report. And
15 that's for Item 22. Do you see that?

16 A I do see that.

17 Q And there you've done your detailed listing, and it is a
18 .40 caliber; correct?

19 A It says on there .40 caliber, yes.

20 Q So that would be the correct information, wouldn't it?

21 A Yeah, it seems like there was a typo in the report. I
22 apologize.

23 Q Okay.

24 **MR. FOSTER:** Thank you. I have no further questions.

25 **THE COURT:** Any redirect?

1 **MR. PRINCIPE:** No, Your Honor.

2 **THE COURT:** All right. You may step down, ma'am.

3 **THE WITNESS:** Thank you, Your Honor.

4 **THE COURT:** Are you releasing this witness?

5 **MR. PRINCIPE:** Yes, Your Honor, we'd like to.

6 **THE COURT:** Any objection?

7 **MR. FOSTER:** No objection.

8 **THE COURT:** You are free to leave.

9 (At 3:05 p.m., witness excused.)

10 **THE COURT:** How long will your next witness be?

11 **MR. PRINCIPE:** Short.

12 **THE COURT:** Maybe we do one more. Anybody need an
13 immediate break?

14 Call your next witness, please.

15 **MR. PRINCIPE:** Your Honor, the next witness will be
16 Erica Lee.

17 **PROBATION OFFICER ERICA LEE,** GOVERNMENT'S WITNESS, being first
18 duly affirmed, at 3:05 p.m. testified as follows:

19 **THE COURT:** If you could remove your mask so we can
20 see and hear you and make sure the microphone is directed
21 toward your mouth.

22 Thank you.

23 DIRECT EXAMINATION

24 **BY MR. PRINCIPE**

25 Q Would you please state your name.

1 A Erica Lee.

2 Q What do you do for a living?

3 A I'm a state probation and parole officer, currently in
4 Durham County.

5 Q Were you working in that position in April of 2018?

6 A Yes.

7 Q Are you familiar with the name Hykeem Deshun Cox?

8 A Yes.

9 Q Who is that person?

10 A I supervised Mr. Cox when he was placed on probation in
11 April 2018.

12 Q And how long did you supervise him around that time
13 period?

14 A Not quite 60 days.

15 Q Okay. When you supervise somebody, what types of
16 information do you have or collect about them?

17 A We collect the judgments. If there is a plea agreement,
18 that paperwork is inside the original warrant. Intake
19 information like address, who they live with, phone number,
20 additional contact information, additional contacts.

21 Q How often do you update that information, let's say if
22 somebody moves or changes their phone number?

23 A Regularly. We check that at every meeting.

24 Q Do you recall having an appointment with Mr. Cox in May of
25 2018?

1 A Yes.

2 Q And what did you notice during that appointment?

3 A During that appointment, he had a raised bump on his right
4 wrist. I inquired about it.

5 Q What did you find out?

6 A He informed me that he got that from working on a vehicle
7 with his grandfather.

8 Q And what was the date of this appointment with Mr. Cox?

9 A 5/9/2018.

10 Q And at some point, did you report that information to
11 another law enforcement agency?

12 A Yes, I did. I reported it to Task Force Officer Tim
13 Thomas.

14 Q Why did you report it to him?

15 A He brought it to my attention and asked for a photo.

16 Q Okay. And was photos eventually taken?

17 A Yes, on that same day.

18 Q I'm going to show you now Government's Exhibit 315.

19 Do you recognize that photograph?

20 A Yes.

21 Q And what is that a photograph of?

22 A That is Mr. Cox's right wrist with the scab.

23 Q Okay.

24 **MR. PRINCIPE:** Your Honor, Government moves
25 Government's Exhibit 315 into evidence.

1 **THE COURT:** It's admitted.

2 **MR. PRINCIPE:** Permission to publish?

3 **THE COURT:** You may.

4 **BY MR. PRINCIPE**

5 Q That's what it looked like that day to you?

6 A Yes.

7 Q Around that same time, did you collect a most recent
8 address information for Mr. Cox?

9 A Yes.

10 Q Do you recall what that address was?

11 A 217 North Maple Street, Durham, North Carolina.

12 Q Is that an area you are familiar with?

13 A Yes.

14 Q Did you also get an updated phone number or phone numbers
15 for Mr. Cox around that time?

16 A Yes.

17 Q And do you recall the number (919)519-4224 as being one of
18 those numbers?

19 A Yes.

20 Q And what was Mr. Cox on probation for at that time?

21 A Robbery with a dangerous weapon.

22 **MR. PRINCIPE:** No further questions, Your Honor.

23 **THE COURT:** Any cross?

24 CROSS-EXAMINATION

25

1 **BY MR. BRYSON**

2 Q Mr. Cox was placed on probation on April 5 of 2018; is
3 that right?

4 A Correct.

5 Q And that's the day where he goes to court and enters his
6 guilty plea; right?

7 A Correct.

8 Q And that was ten days before April 15, 2018; is that
9 right?

10 A Correct.

11 Q Okay. And, actually, he was on probation for conspiracy
12 to commit robbery with a dangerous weapon; isn't that right?

13 A I would have to look back at the judgment.

14 **MR. BRYSON:** May I approach the witness, Your Honor?

15 **THE COURT:** You may.

16 **BY MR. BRYSON**

17 Q I'm going to show you this and see if it helps remind
18 yourself. There's more pages too.

19 A There you go. So whenever it pops up, we just see this
20 here on the original offense. But, yes, correct.

21 Q All right. He received a suspended sentence of a minimum
22 of 18 months --

23 **MR. PRINCIPE:** Objection, Your Honor.

24 **THE COURT:** Grounds? Do you want to approach?

25 **MR. PRINCIPE:** Yes, Your Honor.

1 **THE COURT:** All right.

2 (The following proceedings were had at the bench by the
3 Court and Counsel out of the hearing of the jury:)

4 **THE COURT:** All right.

5 **MR. PRINCIPE:** Your Honor, our position is that he
6 will have an opportunity to impeach Mr. Cox in more detail
7 about that, but, essentially, other than the fact of what he
8 was on probation for, the details of his judgment or the term
9 of his probation doesn't seem relevant or appropriate at this
10 time.

11 **THE COURT:** Are you contending that it's not
12 admissible under 609, or is it just a relevancy objection?

13 **MR. PRINCIPE:** One moment, Your Honor.

14 (Defendant's counsel conferred.)

15 **MR. PRINCIPE:** Under 609, the fact of conviction may
16 be, but not all the details of how a judgment was structured or
17 the length of the sentence, just the fact of conviction.

18 **THE COURT:** What is your response?

19 **MR. BRYSON:** Well, I think one of the things that's
20 going on here is that he ultimately gets violated for his
21 probation, and the probation ultimately gets terminated without
22 any revocation. I just wanted to inquire about that.

23 **THE COURT:** What does the length of the sentence have
24 anything to do with -- can't you make that point without --

25 **MR. BRYSON:** I guess --

1 **THE COURT:** All right.

2 **MR. BRYSON:** -- if the Court wants to sustain that.

3 **THE COURT:** I will sustain it for now.

4 (End of bench conference.)

5 **THE COURT:** All right. Sustained.

6 **BY MR. BRYSON**

7 Q So the offense that he was convicted of, the conspiracy,
8 that is a felony offense in North Carolina; correct?

9 A Correct.

10 Q All right. So having been convicted of a felony, it would
11 be unlawful for him to possess a firearm; correct?

12 A Correct.

13 Q In fact, even separate and apart from that, as a standard
14 condition of probation in North Carolina, one is not allowed to
15 possess a firearm; is that correct?

16 A Correct.

17 Q As another standard condition of probation, he's not to be
18 convicted of any further criminal offenses; is that correct?

19 A Correct.

20 Q And as a probation officer, you will monitor that to make
21 sure that your probationers do not pick up new charges;
22 correct?

23 A Correct.

24 Q And at some point in this case, you became aware that he
25 did pick up new charges; is that right?

1 A Yes.

2 Q And you became aware that the offense date for those new
3 charges was April 15, 2018?

4 A Correct.

5 Q And you filed a violation report against him in this case?

6 A Correct.

7 **MR. PRINCIPE:** Objection, Your Honor.

8 **THE COURT:** Overruled.

9 **BY MR. BRYSON**

10 Q You filed a violation report against him in this case?

11 A Correct.

12 Q Okay. His probation was not revoked?

13 A No, it was not.

14 Q It was terminated?

15 A Correct.

16 Q Which means he'll never have to serve any of his suspended
17 sentence?

18 A Correct.

19 **MR. BRYSON:** Those are my questions.

20 **THE COURT:** All right. Any redirect?

21 **MR. PRINCIPE:** No, Your Honor.

22 **THE COURT:** All right. You may step down.

23 **MR. GREEN:** Your Honor, may we approach?

24 **THE COURT:** Yes.

25 (The following proceedings were had at the bench by the

1 Court and Counsel out of the hearing of the jury:)

2 **MR. PRINCIPE:** We need the witness not to leave yet.

3 **THE COURT:** Well, that's up to you.

4 **MR. GREEN:** Would you go stop that witness.

5 Your Honor, the clear import of those questions was
6 to suggest that something nefarious has happened. I have no
7 independent information as to why Mr. Cox's probation was
8 terminated. I would like a recess to find out why it was
9 terminated, if there has been some agreement or deal which the
10 Government is not aware of. We would have an obligation to
11 disclose that, and we would disclose it.

12 **THE COURT:** All right. There was no objection to the
13 questions.

14 **MR. PRINCIPE:** I objected. I did object when it got
15 to the violation.

16 **THE COURT:** I did not hear any objection.

17 **MR. PRINCIPE:** I'm sorry. I thought you overruled
18 the second objection. You said overruled, and then she
19 answered the question.

20 **THE COURT:** On whether he violated. There was a
21 question of whether he violated, and the answer was, yes,
22 because of this offense apparently, and then there were further
23 questions without any objection.

24 **MR. GREEN:** I thought he said "Objection", but maybe
25 I am misremembering.

1 **MR. BRYSON:** I don't remember.

2 **THE COURT:** Well, if you want to go talk to your
3 witness, we're going to take a break now anyway, we can bring
4 it up after that. But I don't recall there being any other
5 objection other than those. Justice is invoked. So if you
6 want to object, object.

7 (End of bench conference.)

8 **THE COURT:** All right. Ladies and gentlemen, we're
9 going to take our afternoon break right here. So if you are
10 taking notes, please put your notepads in your envelopes.
11 Leave your envelopes in your chair.

12 And remember all my admonitions to you. You are not
13 to discuss the case among yourselves or any aspect of the case.
14 Simply take a break. Remember all my admonitions. We'll take
15 a 20-minute break, and then we'll call for you after that, and
16 we'll continue with the evidence.

17 If you would, please take the jury to the jury room.
18 And everyone else remain in the courtroom.

19 (The jury departed the courtroom at 3:18 p.m.)

20 **THE COURT:** All right. Please be seated. Everyone
21 else remain in the courtroom until the jurors are safely across
22 the hall.

23 My review of the transcript reveals no objection
24 other than the objection to the question of whether a violation
25 report was filed. There was an answer and then an objection,

1 but I overruled it. After that, there were no further
2 objections, according to the transcript. That was my
3 recollection. If your recollection is different, let me know.

4 **MR. PRINCIPE:** My recollection is different, Your
5 Honor. I objected the one time. We had the bench conference.
6 They circled back around to the same line of questioning. When
7 they asked if he had been revoked, I objected again because we
8 were going back to the same subject matter that you had
9 previously sustained.

10 **THE COURT:** Well, you did. And your objection was to
11 the length of sentence, and I overruled the objection because
12 they were simply asking whether he had been revoked on his
13 probation. After that, there were no other objections. There
14 were more questions without objections. So you're correct; you
15 did object at that point. I overruled it. But the question
16 was: "And you filed a violation report against him?" And
17 answer: "Correct."

18 You objected after that, but I overruled it, in any
19 event. But there were more questions without objections.

20 **MR. PRINCIPE:** Okay, Your Honor.

21 **THE COURT:** That's why I didn't rule, because I was
22 not going to jump in and sustain my own objections.

23 Okay. So if you think there is something that needs
24 to be raised with the witness, then you will need to do that
25 before the 20 minutes is up so I know whether you are going to

1 come back. Maybe Mr. Green knows what he wants to do.

2 (Mr. Green returned to the courtroom.)

3 **MR. PRINCIPE:** Yes, Your Honor.

4 **THE COURT:** I guess you are in a little bit of a
5 difficult position because the witness is still testifying, but
6 you're trying to find information about what's going on with
7 the witness.

8 In your absence, we established that the objection
9 was to the question of whether Mr. Cox had been revoked. The
10 objection came after the answer, but I went ahead and overruled
11 it. After that, there were no further objections.

12 **MR. GREEN:** Yes, Your Honor.

13 **THE COURT:** So that's why I did not rule. So I don't
14 know whether you think the witness is necessary again or not.

15 **MR. GREEN:** We need to make further inquiry, given
16 what was suggested. We do. So I would like to speak with that
17 witness further. I certainly welcome counsel to join me.

18 **THE COURT:** All right. That's fine. Why don't you
19 all make arrangements, and then if there is any chance she's
20 going to testify when we start back up, let me know. I would
21 like to start in 20 minutes, if we can do that.

22 **MR. GREEN:** Yes, Your Honor.

23 **THE COURT:** We'll take a break. Please be ready at
24 20 'til.

25 (Proceedings recessed at 3:24 p.m.)

1 (Proceedings called back to order at 3:43 p.m.)

2 (The Defendant was present.)

3 **THE COURT:** Okay. Mr. Green?

4 **MR. GREEN:** We'll move to release that witness. We
5 have some other inquiries we need to make, Your Honor, but
6 nothing further.

7 **THE COURT:** Okay. All right. We're ready to proceed
8 then?

9 **MR. GREEN:** We are.

10 **THE COURT:** Okay. All right. Let's bring the jury
11 back in, please.

12 Do you know who your next witness is?

13 **MR. GREEN:** Sarah Fox.

14 **THE COURT:** You can bring that witness in.

15 (The jury returned to the courtroom.)

16 **THE COURT:** Please be seated, everyone.

17 The Government may call its next witness.

18 **MR. GREEN:** The Government calls Sarah Fox.

19 **SARAH FOX,** GOVERNMENT'S WITNESS, being first duly affirmed, at
20 3:46 p.m. testified as follows:

21 **THE COURT:** Please remove your mask so we can see and
22 hear you and point the microphone toward your mouth.

23 Thank you.

24 DIRECT EXAMINATION

1 **BY MR. GREEN**

2 Q Would you tell the jurors your full name.

3 A My name is Sarah Fox.

4 Q And, Miss Fox, where generally did you live in April of
5 2018?

6 A In Durham, North Carolina.

7 Q Did you live near Driver Street?

8 A Yes.

9 Q I'll direct your attention to the late evening of
10 April 15, 2018. Do you recall that day?

11 A No, I don't.

12 Q Do you recall placing a 911 call?

13 A I don't.

14 Q I am going to play an audio for you and ask if you -- from
15 Government's Exhibit 7 and see if you recognize your voice.

16 (Government's Exhibit No. 7 was played.)

17 **BY MR. GREEN**

18 Q Do you recognize your voice?

19 A Yes, I do.

20 Q And do you recall now making a 911 call in April of '18
21 about something?

22 A I don't recall that specific 911 call, but I do recognize
23 my voice.

24 Q I'll ask you to listen to this call.

25 (Government's Exhibit No. 7 was played.)

1 **BY MR. GREEN**

2 Q Have you heard that call before?

3 A Yes, I have.

4 Q And does that refresh your recollection about hearing
5 gunshots somewhere near your home on Driver Street?

6 A Yes, that's what I called about.

7 Q And -- and you described hearing two shots?

8 A That's correct.

9 **MR. GREEN:** Thank you. That's all the questions I
10 have.

11 **THE COURT:** Any cross?

12 **MR. BRYSON:** No questions, Your Honor.

13 **THE COURT:** Thank you. You may step down, ma'am.

14 **MR. GREEN:** May the witness be released?

15 **MR. BRYSON:** No objection.

16 **THE COURT:** You're free to leave, ma'am.

17 (At 3:52 p.m., witness excused.)

18 **THE COURT:** Call your next witness.

19 **MR. PRINCIPE:** Your Honor, the next witness is
20 William Joint.

21 **OFFICER WILLIAM JOINT,** GOVERNMENT'S WITNESS, being first duly
22 affirmed, at 3:52 a.m. testified as follows:

23 **THE COURT:** Please remove your mask so we can see and
24 hear you and point the microphone toward your mouth.

25 Thank you.

DIRECT EXAMINATION

BY MR. PRINCIPE

Q Would you state your name.

A Officer William Joint.

Q Who do you work for?

A Durham Police Department.

Q How long have you worked with the Durham Police Department?

A Three years.

Q Were you working there in April of 2018?

A Yes, sir.

Q How long had you been working there in April of 2018?

A I was hired in July and then went through training, so I was in the first phase of PTO.

Q So you were hired in July of 2017?

A Correct. But I wasn't working until 2018.

Q Okay. And do you recall responding to a call for service on North Driver Street on April 15, 2018?

A Yes, sir.

Q Approximately what time of day was that that you responded to that call?

A 10:46 in the evening, close to 11:00 p.m.

Q Okay. Were you a patrol officer at the time?

A Yes, sir.

Q Are you a patrol officer now?

1 A Yes.

2 Q Were you working with somebody that night?

3 A Yes, my PTO, Officer Joseph Justice.

4 Q And what is a PTO?

5 A It is the officer that the department uses to train new
6 officers that are just coming out of the academy.

7 Q So you were the new guy; right?

8 A Yes, sir.

9 Q Okay. Who was driving the vehicle to that location when
10 the call came in?

11 A I was, sir.

12 Q And what information did you receive when you were
13 dispatched to that location?

14 A That a GS -- gunshot wound was reported in the 200 block
15 of West Main Street and Driver Street.

16 Q Had you been to that area before?

17 A Yes. Through the training, I've been in that area before.

18 Q So you were generally familiar with that area?

19 A Yes, sir.

20 Q I am going to play a 911 call from Government's Exhibit 7.
21 (Government's Exhibit No. 7 was played.)

22 **BY MR. PRINCIPE**

23 Q Officer Joint, what was the weather like when you
24 responded to that call?

25 A It was raining that night.

1 **MR. PRINCIPE:** May I approach the witness?

2 **THE COURT:** Yes.

3 **BY MR. PRINCIPE**

4 Q What was the first name of your PTO?

5 A Joseph.

6 Q Did Joseph Justice have body-worn camera at that time?

7 A Yes, sir.

8 Q And I'm showing you Government's Exhibit 314.

9 Do you recognize that disk?

10 A Yes.

11 Q Did you have an opportunity to review the body camera
12 footage on this disk?

13 A Yes.

14 Q Was that body-worn camera footage from the camera that
15 Officer Justice was wearing that night?

16 A Yes, sir.

17 Q Did you see yourself on that footage?

18 A Yes.

19 Q Did you interact with the person who had an injury at that
20 scene?

21 A Yes.

22 Q Is that captured on the footage from Officer Justice's
23 camera?

24 A Yes.

25 **MR. PRINCIPE:** Government would move Government's

1 Exhibit 314 into evidence.

2 **THE COURT:** Admitted.

3 **MR. PRINCIPE:** Permission to publish the video, Your
4 Honor?

5 **THE COURT:** You may.

6 **MR. PRINCIPE:** We'd like to advance the video to
7 approximately three minutes.

8 (Government's Exhibit No. 314 was played.)

9 **BY MR. PRINCIPE**

10 Q Do you recognize the person in this image at 5 minutes and
11 14 seconds?

12 A Yes, sir.

13 Q Who is that?

14 A Myself.

15 **MR. PRINCIPE:** Continue playing.

16 (Government's Exhibit No. 314 was played.)

17 **MR. PRINCIPE:** Stop at 5 minutes and 40 seconds and
18 advance it to 7 minutes and 30 seconds.

19 **BY MR. PRINCIPE**

20 Q Is that you in the image there?

21 A Yes.

22 **MR. PRINCIPE:** Continue.

23 (Government's Exhibit No. 314 was played.)

24 **BY MR. PRINCIPE**

25 Q So we watched those two segments of the body-worn camera.

1 A Yes.

2 Q Let me ask you first about the tall individual in black.

3 Did you see an injury on that person?

4 A Yes, he was shot in the back.

5 Q Did you obtain the names of any of the three individuals
6 that were out there?

7 A The man in the red pants was Charles Daniels.

8 Q And who was the tall person with the injury to his back?

9 A Darryl Bradford.

10 Q Did you or any other officers look for any evidence of a
11 drive-by shooting in the areas described by those witnesses?

12 A Sergeant Frances was the woman in the video, and Officer
13 Justice looked for shell casings, and none were found.

14 **MR. PRINCIPE:** I apologize. May I have one moment,
15 Your Honor?

16 **THE COURT:** All right.

17 (Assistant U.S. attorneys conferred.)

18 **BY MR. PRINCIPE**

19 Q And there was accounts of that drive-by shooting by two
20 individuals; correct?

21 A Can you repeat that question?

22 Q Sure. When you were standing there first with
23 Mr. Bradford, did he give an account of what happened?

24 A Yes, sir.

25 Q What did he say happened?

1 A He said he was shot walking down Main Street and that the
2 vehicle went west on Main Street.

3 Q And then the second segment, you spoke with Mr. Daniels;
4 correct?

5 A Yes.

6 Q And what did Mr. Daniels say happened?

7 A He said also a black car was believed to be the suspect
8 vehicle, but it went the opposite way.

9 Q So they had statements that were not -- that were
10 inconsistent with one another?

11 A Yes, sir.

12 **MR. PRINCIPE:** And if we could just pull up the very
13 beginning of that video and just stop it.

14 **BY MR. PRINCIPE**

15 Q So you were responding -- well, where is this video
16 starting where there is walking?

17 A From the previous call that I was leaving, which was in
18 the general area of the gunshot wound call.

19 Q Okay. And we started the video at approximately -- the
20 first clip was at approximately three minutes when you arrived
21 at the Driver Street scene?

22 A Yes, sir.

23 Q So is it fair to say you arrived at Driver Street three
24 minutes after the timestamp here?

25 A Yes, sir.

1 Q And what is the date and time stamp -- please go back.
2 What is the date and timestamp at the very beginning of this
3 video?

4 A April 15, 2018, at 10:48 p.m.

5 Q So you would have arrived on Driver Street about five
6 minutes after that?

7 A Yes, sir.

8 **MR. PRINCIPE:** No further questions. Thank you.

9 **THE COURT:** Any cross?

10 **MR. BRYSON:** No questions, Your Honor.

11 **THE COURT:** You may step down, sir. If you would put
12 your mask back on as you exit the courtroom.

13 **MR. PRINCIPE:** May this witness be released, Your
14 Honor?

15 **THE COURT:** Any objection?

16 **MR. BRYSON:** No objection.

17 **THE COURT:** You're free to leave, sir.

18 **THE WITNESS:** Thank you, Your Honor.

19 (At 4:13 p.m., witness excused.)

20 **MR. PRINCIPE:** The Government next calls Justin
21 Ellerbe.

22 **STAFF SERGEANT JUSTIN ELLERBE,** GOVERNMENT'S WITNESS, being
23 first duly affirmed, at 4:13 p.m. testified as follows:

24 **THE COURT:** Please remove your mask so we can see and
25 hear you and point the microphone toward your mouth.

1 Thank you.

2 DIRECT EXAMINATION

3 **BY MR. PRINCIPE**

4 Q Would you state your name.

5 A Justin Ellerbe.

6 Q And who do you work for?

7 A The Durham County Sheriff's Office.

8 Q What position are you in?

9 A I'm a staff sergeant currently assigned as the detention
10 intelligence supervisor.

11 Q Where do you operate out of?

12 A The Durham County Detention Facility.

13 Q So is that basically the detention center or jail?

14 A Yes, sir.

15 Q And how long have you worked for the Durham County
16 Sheriff's Office?

17 A Twenty-one years.

18 Q And what are the different roles that you have had?

19 A I've worked everything from a detention officer to a
20 deputy sheriff, everything in the detention center, all of
21 those positions. And, again, my current assignment for the
22 past six years has been detention intelligence.

23 Q What does a detention intelligence officer do?

24 A Process information gathered within -- from various
25 sources within the detention facility and turn it into actual

1 intelligence for our law enforcement partners.

2 Q And what is the purpose of that information or
3 intelligence?

4 A To aid our law enforcement partners in ongoing
5 investigations.

6 Q So you were in that position in May of 2018?

7 A Yes.

8 Q Were you familiar at that time with Semaj Jayron-Maleek
9 Bradley?

10 A Yes, sir.

11 Q Did you have an encounter with him at the detention center
12 on May 29, 2018?

13 A Yes, sir, I did.

14 Q Where was he at the time?

15 A He was housed in the detention facility in one of the
16 housing units, Pod 4D.

17 Q And why did you have contact with him on that date?

18 A At the request of Corporal Champagne, he asked me to take
19 a photo of Mr. Bradley's face.

20 Q Okay. Did he give you any more details as to why?

21 A Not that I can recall.

22 Q Okay. And so what did you do when you were asked to do
23 that?

24 A Shortly after 5:00 p.m., I went to the Housing Unit 4D and
25 escorted Mr. Bradley from that housing unit, and I told him

1 that I needed to take a picture of his face.

2 Q Did he say something at that point?

3 A Yes. When I said, "I need to take a picture of your
4 face," he pointed to a scar just beneath his left eye on his
5 check and said, "What? This?"

6 **MR. PRINCIPE:** May I approach the witness --

7 **BY MR. PRINCIPE**

8 Q Actually, let me show you Government's Exhibit 316 on your
9 monitor.

10 **THE COURT:** All right.

11 **BY MR. PRINCIPE**

12 Q Do you recognize what that is?

13 A Yes, sir.

14 Q What is that?

15 A That's a photo I took of Mr. Bradley.

16 Q Okay. And when was that photo taken?

17 A May 28.

18 Q Was that during the encounter you had with him while he
19 was in the detention center that you just testified to a few
20 minutes ago?

21 A Yes, sir.

22 Q Okay. Did that fairly and accurately show the condition
23 of his face at that time?

24 A Yes, sir.

25 **MR. PRINCIPE:** Your Honor, Government moves

1 Government's Exhibit 316 into evidence.

2 **THE COURT:** Admitted.

3 **MR. PRINCIPE:** Permission to publish that?

4 **THE COURT:** You may.

5 **MR. PRINCIPE:** If we can zoom in around the eye and
6 cheek area.

7 **BY MR. PRINCIPE**

8 Q Is that the area of his body that he pointed to?

9 A Yes, sir, it is.

10 **MR. PRINCIPE:** Back out.

11 Thank you. No further questions.

12 **THE COURT:** Any cross?

13 **MR. FOSTER:** I have no questions.

14 **THE COURT:** Thank you, sir. You may step down. Don
15 your mask again and be careful on the step down from the
16 witness stand.

17 **MR. PRINCIPE:** May the witness be released, Your
18 Honor?

19 **THE COURT:** Any objection?

20 **MR. FOSTER:** No objection.

21 **THE COURT:** You're free to leave. Thank you.

22 (At 4:18 p.m., witness excused.)

23 **THE COURT:** Call your next witness.

24 **MR. GREEN:** David Cramer.

25 **INVESTIGATOR DAVID L. CRAMER,** GOVERNMENT'S WITNESS, being first

1 duly affirmed, at 4:19 p.m. testified as follows:

2 **THE COURT:** If you would remove your mask so we can
3 see and hear you and bend the microphone so it's directed
4 toward your mouth.

5 **THE WITNESS:** Yes, Your Honor.

6 DIRECT EXAMINATION

7 **BY MR. GREEN**

8 Q Would you tell the jury your full name.

9 A David Lee Cramer.

10 Q Could you tell us what you do for a living?

11 A I'm a homicide investigator with the Durham Police
12 Department.

13 Q And how long have you held that job?

14 A I have been a police officer for eight and a half years
15 and a homicide investigator for the last three.

16 Q Were you a homicide investigator in April of 2018?

17 A I was.

18 Q And what, generally, are your duties as a homicide
19 investigator?

20 A So I investigate any unnatural death that occurs in the
21 city of Durham, any natural death that does not have an
22 attending physician, and any homicide that occurs within the
23 city limits.

24 Q And were you working in that capacity on April 15, 2018?

25 A Yes, I was.

1 Q Could you describe to the jurors if you got dispatched
2 anywhere in reference to a shooting?

3 A Yes. The evening of April 15, shortly after 11:00 p.m., I
4 was notified of a homicide that occurred at 4617 Carlton
5 Crossing Drive.

6 Q And did you respond to the area?

7 A I did.

8 Q What did you see when you arrived?

9 A When I initially arrived, it was heavily raining. It was
10 about 64 degrees outside. And upon my arrival, I made initial
11 observations of the scene.

12 Q And could you describe those initial observations?

13 A Yes. So as I said before, it was heavily raining. I
14 observed shell casings -- fired shell casings in the roadway,
15 multiple calibers, some glass fragment in front of 4617 Carlton
16 Crossing. I observed a Toyota Sienna van that was in the
17 roadway. The decedent was sitting in the driver's seat.

18 I also observed a blue Nike shoe that was in the front
19 yard, multiple spent fired shell casings as well on the front
20 walkway that leads to the front porch, as well as on the front
21 porch with a latex glove.

22 Q Did you speak to witnesses there?

23 A I did.

24 Q As you spoke to the witnesses, did that include the
25 family?

1 A Yes, it did.

2 Q And did they relate to you what had happened?

3 A They did.

4 Q And what did they describe, generally?

5 A They described -- Ms. Chan, Mr. Zheng's wife, described
6 responding home with her husband in the Toyota Sienna van. As
7 she walked up to her front porch to retrieve the handgun, as is
8 their nightly routine, as described by the family, she observed
9 that her son reacted to seeing something. As she turned
10 around, she fell into the front of the house through the door
11 and observed multiple people running towards her. She heard
12 multiple shots. And then she would exchange fire with the
13 suspects as they ran and jumped back into a white, as she
14 described, Jeep and drove away.

15 Q Did you then kind of look around in terms of evidence
16 you're seeing on the scene for evidence that, for lack of a
17 better word, corroborated what was described?

18 A Yeah. At one point during her statement, she stated she
19 was unable to initially fire her weapon. So she had to, as she
20 described, rack the slide multiple times, which ejected
21 multiple unfired rounds which were still visible on the porch.
22 And there were multiple shell casings from the same caliber
23 firearm as was located within her house, as well as multiple
24 shell casings outside the residence as well.

25 Q Now, as you began to assess that scene, what did you

1 decide to do next?

2 A After assessing the scene, we initially did a canvass of
3 the surrounding residences to look for surveillance footage or
4 any possible witnesses.

5 Q Did you find witnesses?

6 A I did. I spoke to one individual that night.

7 Q And what individual is that?

8 A Matt Hofmeier, 4702 Carlton Crossing.

9 Q What did Mr. Hofmeier relate?

10 A He stated that he was inside of his residence and he heard
11 multiple gunshots. As he looked out his window, he observed a
12 newer model white SUV driving southbound down Carlton Crossing,
13 and he observed the rear passenger door closing as the vehicle
14 was driving away.

15 Q Did that pique your interest?

16 A It did.

17 Q What did you determine about where the victim and his
18 spouse had come from earlier that evening?

19 A So they came from China Wok at 3825 South Roxboro Street.

20 Q And given the information that you had been provided at
21 the scene and what you saw there, did you oversee -- were you
22 there as crime scene investigators responded and started
23 collecting evidence?

24 A Yes, I was on scene as Forensics responded and processed
25 the scene.

1 Q And you observed them documenting and picking up evidence,
2 et cetera?

3 A I did. And after the scene was completed, we did do an
4 evidence review together as well.

5 Q Now, after you had got this kind of initial assessment of
6 what had happened, what did you do next?

7 A So when we were still processing the scene, we had to have
8 the vehicle towed due to the weather. So as we were beginning
9 to complete that processing, I was notified of additional
10 damage to a house across the street, 4618 Carlton Crossing
11 Drive. I was unable to initially make contact with them, left
12 a business card, and then after the scene would be cleared some
13 hours later, I would receive a return phone call from the
14 family that resided that there, and I would respond back out
15 there with Forensics to collect a projectile that would be
16 located within the residence.

17 Q Were you present when it was collected?

18 A I was. I located the projectile near a dresser near the
19 front door.

20 Q Based on what you had seen in terms of the shell casing
21 and the evidence that you saw at the scene, how did you start
22 to formulate your investigation?

23 A So based off of them -- and "them" being Ms. Chan and
24 Mr. Zheng -- arriving back from China Wok and upon their
25 arrival this incident occurring, I decided to go over to that

1 business and canvass the surveillance footage from surrounding
2 businesses that surrounded China Wok.

3 Q And did you do that?

4 A I did.

5 Q And where did you look?

6 A So I looked at every business that surrounded China Wok,
7 and I began at a business, McDonald's, as you turn into the
8 street and before you go into the parking lot. But then I
9 would make it to a Kroger, which has cameras that faces the
10 actual business.

11 Q And did you ask for the surveillance video?

12 A Yes.

13 Q And did you watch it that day or some later day?

14 A Both. I watched initial footage from the night of the
15 15th while I was inside the store, and I would request footage
16 from April 8 to April 15, which would be given to me at a later
17 date, and I would review that additional footage then.

18 Q And when you looked at the surveillance on the 15th, what
19 were you looking for?

20 A Based off of the witness statements, I was trying to see
21 if any vehicle had come and gone in short proximity to when the
22 victims left. And I was looking for the victim's vehicle to
23 see what time they left, as well as a white in color SUV as
24 stated by the witnesses.

25 Q And did you see that?

1 A I did.

2 Q I'm going to show you an excerpt from Exhibit 26.

3 Do you recognize this surveillance camera?

4 A I do.

5 (Government's Exhibit No. 26 was played.)

6 Q I paused that at -- I'm sorry. It's not paused -- at
7 22:05:21.

8 Do you recall seeing that video?

9 A Yes, I do.

10 Q And did you make note of it?

11 A I did.

12 Q Why did you make note of it?

13 A Because this -- I observed a newer model white SUV pulling
14 into the parking lot and backing into a parking space in short
15 proximity to China Wok.

16 Q As you watch this surveillance video, what do you recall
17 about watching it and what other significant things you saw on
18 it?

19 A So near the top left corner of the video, there is a van
20 that's parked in front of the China Wok. That is a Toyota
21 Sienna van belonging to Mr. Zheng and Ms. Chan.

22 Q And why was that significant to you?

23 A Because based off of what it appeared, the business was
24 about to close and they were about to leave. So somebody that
25 was driving past would see their van parked in front of the

1 business.

2 Q Also the date/time group in this video, could you read it
3 out loud?

4 A I'm sorry, sir. Can you repeat that?

5 Q Can you read out loud the date and time.

6 A April 15, 2018, 2205 and 29 seconds.

7 Q How long, approximately, is this prior to when you get the
8 report of the shooting?

9 A Around 15 to 17 minutes.

10 Q What is the last timestamp you see on this particular clip
11 of the van?

12 A April 15, 2018, 2208 and 19 seconds.

13 Q And at this point had the white car left before the van
14 has departed?

15 A Yes, it had.

16 Q What is the next thing you did in your investigation?

17 A So based off the surveillance footage and reviewing
18 additional footage within the parking lot of China Wok, we
19 determined it was a newer model Lincoln MKX was the vehicle we
20 were looking at in the surveillance footage. So we checked
21 department databases for any incident reports of anyone
22 reporting any damage to a Lincoln MKX based off of what we had
23 seen on the scene with the glass fragments.

24 Q Now, going back to the scene, had you noticed glass
25 fragments in the roadway?

1 A Yes.

2 Q And why was that significant?

3 A Because with Ms. Chan's statement that she returned
4 gunfire with them, there was a good possibility that a vehicle
5 they may have been operating would have been struck by gunfire.

6 Q Did you find a report of damage to a Lincoln MKX?

7 A I did, reported the morning of April 16, 2018, roughly
8 nine hours after the incident.

9 Q And what did you do when you found that report?

10 A So I first read the report, got an initial understanding
11 of what was being reported, and then based off of the incident
12 report information, I would check 911 calls in the area that
13 the caller Taquila House would say that the incident had
14 actually occurred.

15 Q Did you review the body-worn camera?

16 A I did.

17 Q I'm going to show you Government's Exhibit 32.

18 (Exhibit played.)

19 **BY MR. GREEN**

20 Q Do you recognize that as the body-worn camera you
21 reviewed?

22 A I do.

23 Q You then pull the report associated with that body camera?

24 A That's correct.

25 Q And you mentioned Miss House, Taquila House?

1 A Yes. She was the reporting person for the incident
2 report.

3 Q Do you recall what had been reported with regard to that
4 vehicle --

5 A She had stated --

6 Q -- initially?

7 A I'm sorry.

8 She had stated that she had left this vehicle parked off
9 of a street called Wiggins Street, which was in the northern
10 part of the city. And she had left it unoccupied around
11 10:00 p.m. the night of the 15th, and she returned back to the
12 car within about an hour, so about 11:00 p.m., and returned
13 back to her house -- or her apartment at 1315 Morreene Road,
14 but didn't notice the damage to the vehicle until the next
15 morning.

16 Q And did you make an inquiry to see if there had been any
17 reports of shots fired in the Wiggins Road areas?

18 A I did. I checked for approximately a two-hour time frame
19 between 9:00 p.m. and 11:00 p.m.

20 Q And was there?

21 A There was not.

22 Q So based on that information, now that you had seen a
23 Lincoln MKX with bullet damage on the side, what did you do
24 next?

25 A I attempted to make contact with Miss House.

1 Q And did you?

2 A I did.

3 Q When you talked to her, initially, what did she tell you?

4 A Initially, she provided the same statement that she stated
5 in the incident report in regards to how the damage got there.
6 She would -- I would ask her if the vehicle had been repaired,
7 and she stated that it had. And then near the end of our
8 conversation, she would make statements saying that the vehicle
9 was still being repaired, but she did not know where it was
10 being repaired at.

11 Q And what did you do with that information once she
12 provided it?

13 A I asked her if we could meet in person. She said that she
14 could not because she was going to work. And she indicated
15 that she worked at Duke North, which is a part of the Duke
16 University Medical Center campus.

17 Q Did you determine -- did you decide to go out there where
18 Miss House worked?

19 A I did.

20 Q Did you take -- were you by yourself or was there another
21 investigator with you?

22 A Investigator Mitchell came to the hospital with me.

23 Q Describe what happened once you got there.

24 A So we made contact with Miss House in a supervisor's
25 office; and when we spoke with her, she would state that the

1 story that she had given was false, and she would indicate that
2 a gentleman by the name of Wiley was the one that was operating
3 the vehicle the day of the 15th.

4 Q When you talked to Miss House, did she provide her
5 telephone number, either when you called her or at the time you
6 interviewed her?

7 A I believe that the number that I got from her was from the
8 incident report, which worked.

9 Q I am going to -- do you recall offhand what that number
10 was?

11 A I would have to review my case notes. I'm sorry.

12 **MR. GREEN:** May I approach?

13 **THE COURT:** You may.

14 **BY MR. GREEN**

15 Q I'm looking at paragraph 70, and ask if that refreshes
16 your recollection as to the number that Miss House provided
17 that was her number?

18 A Yes.

19 Q What was the number?

20 A (252) 499-3761.

21 Q While you were speaking with Miss House at Duke, what did
22 she relate to you in regards to what had happened with the
23 Lincoln?

24 A She stated that she received a phone call from Wiley
25 sometime after 11:00 p.m., and he had indicated that he had

1 been in a location and there was shooting and he had tried to
2 drive off.

3 Q And during that interview, did Miss House contact
4 Mr. Wiley?

5 A Yes. I can't recall -- I don't recall if he called or she
6 called, but that phone number was -- we did have communication
7 with him, yes.

8 Q And at the time you communicated with him, tell me, were
9 you recording the interview with Miss House?

10 A Yes, it was audio recorded.

11 Q And during that call, tell us how -- did you actually
12 speak to the individual that she had identified as Wiley?

13 A I did.

14 Q And how did that come about?

15 A So when she answered the phone, he multiple times asked,
16 "What's wrong with the car? What's wrong with the car?" I
17 asked him to come in and speak with us. We can talk about it.
18 He became somewhat belligerent, stated that he would not come
19 in and talk with us and that he had the vehicle with him. He
20 had just gotten it repaired and was on his way back in to
21 Durham to return the vehicle.

22 Q And did you or Investigator Mitchell make a note of the
23 telephone number that this individual identified as Wiley had
24 called in?

25 A Yes, we did.

1 Q Do you recall what that number was?

2 A I do.

3 Q What was the number?

4 A (864) 484-6112.

5 Q I'm going to play you a portion of an audio recording and
6 ask if you recognize it.

7 **THE COURT:** Does this have an exhibit number?

8 **MR. GREEN:** It does. It's 311A.

9 **THE COURT:** Thank you.

10 (Government's Exhibit No. 311A was played.)

11 **BY MR. GREEN**

12 Q Do you recognize that recording?

13 A Yes.

14 Q And I heard a female's voice. Whose voice is that?

15 A Taquila House.

16 Q I heard a male voice. Do you recognize that voice?

17 A Yes.

18 Q Whose voice?

19 A Maurice Wiley.

20 Q Now, have you had an opportunity to hear Mr. Wiley's voice
21 at other times?

22 A Up to this point, no.

23 Q But subsequently?

24 A Afterwards?

25 Q Yes.

1 A Yes, upon his arrest on April 27.

2 Q And do you recognize the voice that you've identified as
3 Maurice Wiley as Maurice Wiley?

4 A I do.

5 **MR. GREEN:** And, Your Honor, I am going to move
6 introduction of Government's Exhibit 311A.

7 **THE COURT:** All right. It's admitted.

8 **MR. GREEN:** I ask that it be published?

9 **THE COURT:** It may.

10 (Government's Exhibit No. 311A played.)

11 **BY MR. GREEN**

12 Q Who is that?

13 A That would be me.

14 **MR. GREEN:** Go ahead.

15 (Government's Exhibit No. 311A was played.)

16 **BY MR. GREEN**

17 Q Did you -- did that conversation ultimately end?

18 A Yes. The phone call was disconnected.

19 Q And did you -- while there still with Miss House, did she
20 receive a text message from the telephone number that you had
21 identified as the call originating from?

22 A Yes.

23 Q Do you recall what that text message -- do you note what
24 it took -- what the text message was?

25 A I would have to review my notes for verbatim.

1 Q This is at the end of the interview?

2 A Yes.

3 Q Does that help refresh your recollection?

4 A Yes, it does.

5 Q What was the text message?

6 A It says: *If nobody can tell me what the problem is with*
7 *this car, I am not driving it. Well, it will stay here.*

8 Q What did you do next in your investigation after you left
9 your conversation with Miss House?

10 A I would research the telephone in which we had spoken with
11 Mr. Wiley.

12 Q And did you determine who that number was registered to?

13 A Yes.

14 Q And who was it registered to?

15 A Maurice Wiley.

16 Q Did -- after you had done that, at some point did the
17 Federal Bureau of Investigation become involved or assist the
18 Durham Police Department?

19 A Yes. Agents with the FBI's Raleigh Durham Safe Streets
20 Task Force.

21 Q And did you then begin to communicate and coordinate with
22 those agents?

23 A Yes, I did.

24 Q And the task force agents; is that right?

25 A Yes.

1 Q What did you do next?

2 A So I contacted the FBI, provided them the information that
3 I had been given at this point, and they assisted me with
4 getting phone records for, particularly, this phone at this
5 point.

6 Q Did you do any further research on the Lincoln that was
7 found outside Miss House's residence?

8 A On the Lincoln -- oh, in terms of -- so we would determine
9 that the vehicle had been rented by AVIS Rental at 1720 Guess
10 Road.

11 Q And at some point, were you notified that the Lincoln had
12 been returned?

13 A Yes. The morning of April the 19th, we were notified.

14 Q And did you respond to that location?

15 A I did.

16 Q And what did you find when you got there?

17 A We observed a Lincoln MKX parked in the parking lot of the
18 AVIS Rental, which is on a strip mall, so it's got multiple
19 locations, it's a large parking lot, and the vehicle was parked
20 at the top corner of the parking lot kind of by itself.

21 Q Did you seek to determine who had rented that Lincoln?

22 A Yes. We spoke with employees inside of AVIS.

23 Q Did that include Mr. Hassan?

24 A It did.

25 Q And did Mr. Hassan -- let me back up.

1 Once you had determined Mr. Wiley's identity from the
2 phone records, did you research that name to see if there are
3 other aliases and nicknames associated with it?

4 A I did.

5 Q And what was -- what did you find?

6 A Tweet.

7 Q Tweet?

8 A Yes.

9 Q Did you speak with Mr. Hassan?

10 A I did.

11 Q When you got out there to the -- before that, when you got
12 there and saw the Lincoln at the Budget -- or the AVIS, what
13 did you notice, if anything, about it?

14 A The rear driver's side door, the paint was a different
15 coloration than the rest of the vehicle. And we could see
16 through the outside to the inside and see small glass fragments
17 in the floorboard.

18 Q Did you elect to get a search warrant?

19 A Yes, we did.

20 Q And seize that vehicle?

21 A Yes.

22 Q What did you do next in your investigation?

23 A We spoke with Mr. Hassan.

24 Q And did he give you some information at that time?

25 A Yes.

1 Q I'll ask if you subsequently went back out to Carlton
2 Crossing Drive on or about April 19 and again talk to Ms. Chan,
3 Shirley, and her children?

4 A Yes. After leaving AVIS, I responded out to that location
5 and spoke with them in their residence.

6 Q And so this is roughly four days after the event?

7 A That's correct.

8 Q And when you talked to them about what they had seen and
9 done, did you ask Ms. Chan if she had had any money with her on
10 the occasion of the robbery?

11 A I did ask her that, yes.

12 Q And what did she say?

13 A She said that she did not.

14 Q What did she say she had with her, if you recall?

15 A I don't recall. I would have to review my notes.

16 Q When you left there, what happened next?

17 A So I would also speak with, by telephone, another resident
18 who lives on Carlton Crossing Drive, 4705, Evrardo Macias.

19 Q And what did he relate?

20 A He would report that the night of the 15th he would hear
21 multiple gunshots; and when he looked outside, he saw a newer
22 model white SUV going southbound on Carlton Crossing.

23 Q During this process, are you, as well as the FBI -- are
24 you beginning to assemble, via court orders, telephone records
25 associated with various numbers?

1 A Yes. We received the phone records for the number that
2 Maurice Wiley communicated with us on April 19.

3 Q After April 19, what is the next significant event in your
4 investigation?

5 A We would receive a Crime Stoppers tip.

6 Q Without relating the exact communication of that Crime
7 Stoppers tip, as a result, did you start looking for certain
8 nicknames?

9 A I did.

10 Q And what nicknames did you start to search for?

11 A Stretch, Chub, Semaj, and Tweet.

12 Q Now, the Tweet, you had already encountered that nickname?

13 A I had.

14 Q And starting with Stretch, did you research the Durham
15 database?

16 A I did.

17 Q Is that something that the police department keeps up with
18 when they interact with people, nicknames?

19 A Yes. If an officer encounters that individual and either
20 gets their nickname from them or is able to obtain it, they
21 will put that into our system for us to be able to see.

22 Q What was the individual that was associated with the
23 nickname Stretch in the database?

24 A Darryl Bradford.

25 Q And what was the next nickname you looked for?

1 A Chub.

2 Q And when you started to search for the nickname of Chub,
3 what name did you come up with?

4 A Hykeem Cox.

5 Q And what other nicknames did you look for?

6 A Semaj.

7 Q And did you associate a name of an individual with that
8 nickname?

9 A Yes.

10 Q And who was that?

11 A Semaj Bradley.

12 Q And who else?

13 A Tweet was the last one.

14 Q Now, as you then took those nicknames, what did you do
15 with that information and the associated name of an actual
16 person?

17 A So what I would normally do, someone that I'm
18 investigating in an incident, is try to see what incidents they
19 have been involved in, whether before the incident, after the
20 incident, in close proximity to the incident. And I would
21 locate an incident report for Darryl Bradford from April 15th.

22 Q And describe the incident report that you located.

23 A So Darryl Bradford had reportedly been shot in the back.
24 The incident report time was around 10:44 p.m. on April 15th
25 and the call location was 207 North Driver Street, and the 911

1 caller was Charles Daniels.

2 Q Now, had you gotten the name associated with Charles
3 Daniels yet?

4 A No, I had not.

5 Q Did you then start to look to see if there was other
6 information about the incident?

7 A In regards to that report?

8 Q Yes.

9 A I was able to obtain the telephone number that Charles
10 Daniel called from.

11 Q And what was that number? Do you recall?

12 A It would probably be better if I refer to my notes, sir.

13 Q We'll return to that. We'll return to that point.

14 As you investigated the incident, did you have an
15 opportunity to review the body cam associated with it?

16 A I did.

17 Q And I will play a portion of that body cam for you.

18 **THE COURT:** What is the exhibit number?

19 **MR. GREEN:** 314.

20 **THE COURT:** All right.

21 (Government's Exhibit No. 314 was played.)

22 **BY MR. GREEN**

23 Q Do you recognize this as the body-worn camera video you
24 reviewed?

25 A Yes, I do.

1 (Government's Exhibit No. 314 was played.)

2 **BY MR. GREEN**

3 Q Do you recognize the taller of the gentlemen in the
4 right-hand side of that screen?

5 A Yes, I do.

6 Q Who is that?

7 A Darryl Bradford.

8 Q Was there anything about Mr. Bradford's description that
9 drew your attention in terms of his physical appearance?

10 A Yes.

11 Q And what was it?

12 A His height and that he was skinny.

13 Q And why did that draw your attention?

14 A Ms. Chan described that as being one of the suspects in
15 the shooting.

16 Q And there is a gentleman in the left -- I'm sorry -- my
17 left-hand corner of the monitor just now coming in. Do you
18 recognize who that is?

19 A Yes, I do.

20 Q Who is that?

21 A Charles Daniels.

22 Q And at the time did you have any information about
23 Mr. Daniels?

24 A Not that I can recollect.

25 Q All right.

1 **MR. GREEN:** May I approach the witness?

2 **THE COURT:** Yes.

3 **BY MR. GREEN**

4 Q Looking at Government's Exhibit No. 159, I'll ask if you
5 were able to establish Charles Daniels' telephone number from
6 the information on the 911 call?

7 A Yes.

8 Q What was that number?

9 A (984)260-1816.

10 Q Now, you mentioned earlier that you had gotten some
11 telephone records associated with Mr. Wiley?

12 A That is correct.

13 Q Did you find Mr. Daniels' phone numbers in Mr. Wiley's
14 cell phone records?

15 A Yes, in looking at his records, it showed that they had
16 communicated in April of 2018.

17 **MR. GREEN:** Your Honor, that might be a good place to
18 pause.

19 **THE COURT:** All right. Ladies and gentlemen, we'll
20 stop here tonight. If you will put your notes in your
21 envelopes. Leave your envelopes in your chairs. They will be
22 secured for the evening.

23 Let me ask the lawyers to step up here just a minute.

24 (The following proceedings were had at the bench by the
25 Court and Counsel out of the hearing of the jury:)

1 **THE COURT:** Just a quick update on the status of the
2 schedule.

3 **MR. GREEN:** We're behind a witness and a half. So
4 I've got another 45 minutes to go with this witness and then --
5 we are still going to finish on Friday. I don't now believe
6 that we are going to finish prior to lunch.

7 **THE COURT:** Okay. All right. You told me before
8 what your planning was. Any change in that?

9 **MR. BRYSON:** No.

10 **THE COURT:** Okay. Thank you.

11 (End of bench conference.)

12 **THE COURT:** All right. Ladies and gentlemen, we're
13 still ahead of the schedule that I told you. I don't know that
14 we'll finish tomorrow, but my suspicion is we may finish by
15 Monday. All right. So somewhere in that time frame. So
16 remember all my admonitions, particularly, importantly, don't
17 discuss the case with anyone or among yourselves at all or the
18 evidence. Don't discuss anything about any of it. Simply put
19 it out of your mind. If anybody asks you, you know, how's the
20 trial going, just tell them, I can't talk about it, period, and
21 leave it at that and don't talk to anybody.

22 And when the case is over with, you can then talk to
23 somebody. But not until then. All right. Remember all my
24 admonitions. Don't try to do any research or -- you would be
25 best served not to go out and try to catch up on any kind of

1 news or anything. Just put it out of your mind. I don't know
2 if there is anything on it. But just make it easy for
3 yourself. Go home and have a nice meal. Get some sleep. Come
4 back tomorrow refreshed and ready to go.

5 I appreciate your patience. And you've been great
6 jurors. You're prompt. And we'll do all we can to stay on
7 schedule. Remember all my admonitions. Leave your notes here.
8 I am going to dismiss you for the evening. We'll see you
9 tomorrow at 8:45.

10 (The jury departed the courtroom at Time)

11 **THE COURT:** All right. Please be seated, everyone.
12 Give them a moment to clear out.

13 You may step down, if you will.

14 Do we have any other matter that you need to bring to
15 my attention at this time?

16 **MR. GREEN:** No, Your Honor. We do -- I'll just
17 present -- I think this is by agreement of the parties, but
18 just for the Court's awareness, out of the exchange between
19 Poole and Wiley, we edited the document down to what we think
20 is acceptable. I will present that for whatever purpose the
21 Court --

22 **THE COURT:** All right.

23 **MR. GREEN:** -- make sure we're not hitting on
24 anything we shouldn't be. I'll approach and hand that up.

25 **THE COURT:** This is by agreement between the parties?

1 **MR. BRYSON:** Yes, Your Honor.

2 **THE COURT:** Okay. This will be coming in how?
3 Through a witness?

4 **MR. GREEN:** No, it will come in through Agent Jocys.

5 **THE COURT:** Okay. All right. Anything else?

6 **MR. GREEN:** No.

7 **THE COURT:** All right. Anything from the Defendant
8 at this time?

9 **MR. BRYSON:** No, Your Honor.

10 **THE COURT:** Okay. I think what I am going to do,
11 since it looks since you're still going to be going a little
12 bit tomorrow, first thing in the morning I will get you a draft
13 of the instructions. I'm basically in agreement with what you
14 have all proposed. I will hear the Defendant on his objections
15 on the two portions of them. I do have a little bit of
16 language I typically use on some of these, so I'll highlight
17 anything that's new. And then you can look at it tomorrow, and
18 then we'll go from there.

19 So the Government -- looks like you'll be going
20 tomorrow until roughly when?

21 **MR. GREEN:** That's a great question. I am doing my
22 best to get you a clear answer on that. I don't know if the
23 Court has the schedule. I might be able --

24 **THE COURT:** I do. I don't need an exact answer. I'm
25 just trying to get a sense of whether the case might be

1 resolved tomorrow in terms of evidence, which it sounds like
2 the answer to that is probably yes.

3 **MR. GREEN:** Yes.

4 **THE COURT:** And then whether the lawyers are going to
5 want to do their closings or if it's late in the day, whether
6 you are going to wait and do them on Monday and do everything
7 at once.

8 **MR. GREEN:** My preference generally, and it is just
9 my preference, for whatever purpose, is to go ahead and argue
10 and if we have time and if the jury can get started, let them
11 get started. That's my view, but obviously that's the Court's
12 discretion.

13 **THE COURT:** That may be a function of when you finish
14 then if that happens tomorrow, based on what I'm hearing from
15 the parties, and whether the Defendant wishes to present any
16 evidence.

17 Okay. Unless there is anything else then, I'll see
18 you all tomorrow at 8:45. We still have some jurors apparently
19 in the restroom so we'll give them just a moment. They are
20 using the public restrooms out there. They are marked.

21 All right. I'm told the jurors have left the floor.
22 So you all are free to leave. And obviously if you see if any
23 jurors outside, leave them all alone. Keep your distance from
24 them.

25 Please adjourn Court.

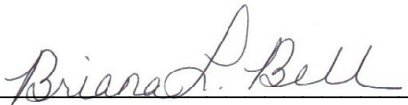
(Proceedings overnight at 5:06 p.m.)

END OF VOLUME IV OF VII

1 UNITED STATES DISTRICT COURT
2 MIDDLE DISTRICT OF NORTH CAROLINA
3 CERTIFICATE OF REPORTER
4
5

6 I, Briana L. Bell, Official United States Court
7 Reporter, certify that the foregoing transcript is a true and
8 correct transcript of the proceedings in the above-entitled
9 matter prepared to the best of my ability.

10
11 Dated this 4th day of February 2022.
12

13
14 
15 Briana L. Bell, RPR
16 Official Court Reporter
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